SUPREME COURT OF THE UNITED STATES.

No. 212.

THE UNITED STATES, APP'TS,

vs.

SILVESTRE DE LA PORTILLA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA.

"Valle de San José."

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1 *Transcript of the proceedings in case number* 469.

SILVESTRE DE LA PORTILLA, claimant, *vs.* THE UNITED STATES, defendant. } For the place named Valle de San José.

3 OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

Be it remembered that on this eighth day of November, anno Domini one thousand eight hundred and fifty-two, before the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of Silvestre de la Portilla for the place named "Valle de San José" was presented, and ordered to be filed and docketed with No. 469, and is as follows, to wit:

(*Vide* page 3 of this transcript.)

Upon which petition the following subsequent proceedings were had in their chronological order, to wit:

SAN FRANCISCO, *Nov.* 10, 1852.

In the same case the deposition of S. Argenello, a witness in behalf of the claimant, taken before Commissioner Hiland Hall, with document marked H H, No. 1, and a translation thereof, marked C, annexed thereto, was filed, and is in the words and figures as follows, to wit:

(*Vide* page 3 of this transcript.)

SAN FRANCISCO, *Feb'y* 21, 1854.

In the same case Commissioner Alpheus Felch delivered the opinion of the board, rejecting the claim.

(*Vide* page 40 of this transcript.)

4 SAN FRANCISCO, *October* 5, 1853.

No. 469, Silvestre de la Portilla, for the "Valle de San José," was submitted on a brief on both sides, and taken under advisement by the board.

SAN FRANCISCO, *Aug't* 15, 1854.

In the same case, on motion of the U. S. law agent, the following order was made, to wit:

(*Vide* page 42 of this transcript.)

5 *Petition.—A.*

To the Board of Commissioners for ascertaining and settling private land claims in the State of California:

Your petitioner, Silvestre de la Portilla, of the county of Los Angeles, in the State of California, respectfully represents to your

honorable body that he claims a certain tract of land called the Valle de San José, containing four square leagues of land, more or less, situated in the county of San Diego, in said State of California; that he claims the same in fee by virtue of a grant made to him under the authority of the Mexican government by Nicolas Gutierrez, governor of the Territory of Alta California, bearing date the 16th of April, 1836.

Your petitioner further represents that juridical possession of said tract of land was given to him on the first day of August, 1836, and the boundaries thereof designated and defined, and that he has been in the peaceable possession thereof ever since, and that he has no knowledge of any interfering claim. Your petitioner presents herewith the original grant of said land, and the judicial possession, in the Spanish language, together with a translation of the same, and will make further proof of title if required.

Your petitioner prays your honorable body to take into consideration his claim to said tract of land and decree his title to be valid and cofirm the same, and your petitioner will ever pray.

N. HUBERT,
Att'y for Petitioner.

Filed in office Nov. 8th, 1852.

GEO. FISHER, *Sec'y.*

Recorded in record of petitions, vol. 1, page 428.

GEO. FISHER, *Sec'y.*

6 *Deposition of S. Arguello.*

Los Angeles, *Nov. 16th*, 1852.

On this day, before Com'r Hiland Hall, came Santiago Arguello, a witness in behalf of the claimant, Silvestre de la Portillo, petition No. 469, and was duly sworn, his evidence being interpreted by the secretary. The U. S. associate law agent was present.

In answer to inquiries by counsel for the claimant, the witness testified as follows:

My name is Santiago Arguello, my age is sixty years, and I reside at San Diego. A paper is now shown me, purporting to be a grant to Silvestre de la Portilla, dated 16th of April, 1836; I am acquainted with the signature of Nicolas Gutierrez, Francisco del Castillo, Negrete and Rosario Moreno. The signatures of the said persons on said paper I believe to be genuine; my own genuine signature is also on said paper; said paper is hereto annexed, and marked H H, No. 1. I know the rancho called Valle de San José; it is in the county of San Diego; it was occupied by the Silvestre de la Portilla from 1834 or 1835 until 1836 or 1837. He had a house on it, in which he lived, and had horses and cattle, and he cultivated the land. Joaquin Ortega occupied it afterwards for two or three years; afterwards it was occupied by Juan ——; he has occupied it to the present time.

S. ARGUELLO.

1703

Sworn and subscribed before me,

HILAND HALL, *Com'r.*

Recorded in ev. B, vol. 2, p. 263. Filed in office Nov. 10, 1852.
GEO. FISHER, *Sec'y.*

Espediente.

Jurisdiccion de Sa. Diego.—Año de 1834.

Expediente sobre el paraje nombrado Valle de S. Jose, solicitado por Dn. Silvestre de la Portilla, 155.

Sello tercero, dos reales, ochocientos veinte y seis siete. { Place of a stamp in the original. } para los años de mil y ochocientos veinte y

{ Place of a stamp in the original for the years 1828–'29, and 1830, and 1831. }

{ Place of a stamp in the original for the years 1828, 1829, and 1830, and 1831. }

Habilitado provicionalmente pa. la receptoria de alcalde del P'to de S. Diego pa. los años de 1833, y 1834, Aruello.

S. E. ARGUELLO.
Sor G'ral de Brigada y Gefe Sup'or Politico del Territoria.

Pueblo de los Angeles,
Marzo 6 de 1834.

De conformidad con las leyes de la materia informe el comandante militar de San Diego, si el interesado en esta instancia obtiene los requisitos prevenidos para ser atendido en su solicitud se el terreno que pretende esta comprendido en las veinte leguas limitorfes y dies litorales que espresa la ley de 18 de Agosto de 1824, si es de regadio, temporal o a brevadore si pertenece à propiedad particular corporacion ò pueblo con todo lo demas que sea concerniente à ilustrar la materia haciendo que el interesado le presente el diseño del sitio que solicita que se agregará á este espediente.

Evacuado todo esto pasará el espediente á los R. R. P. P. Mutios de las misiones de San Diego y San Luis Rey, para que informe lo que les ocurra. El Sor D José Figueroa, g'ral de brigada de los Estados Unidos Mejicana, comand'te g'ly gefe superior politico del territorio de la Alta California asi lo mando decreto y firmo, de que doy feé.

JOSÉ FIGUEROA.

Por au'sa del secretario,
BERNARDO NAVARAETA.

El interestante la esta instancia tiene los requisitos.

El cuidadano Silvestre de la Portillo con el debido respecto qe. debe, ante V. S. comparece y dice; es natural de la villa del Fuerte, del estado de Sonora y radicada hace cinco años en el Puerto de S. Diego del mando de V. S.; y hallandose en el dia con algunos vienes de campo, y no tener parage eu donde ponerlos en seguridad para lograr los aumentos de sus progresos espera de la bondad de V. S. se sirva concederlo el sitio llamado el Valle de San José que queda á la parte del este camino del Rio Colorado y dista de la mission de S. Diego como viente y dos leguas y de la de V. Luis Rey de veinte á veinte y una. Sin perjudicar ha otros paraje que siempre ha sido valdio y amas d'ho sitio conserba un arroyo y varios aguages permanentes. El valle es algo espacio; y por tanto A. V. S. suplica rendidan'te, (3,) tenga la bondad de concederle en propiedad el espresado sitio del Valle de Sa. José, para cubrirlo por la pronto con quatro cientas cabezas de ganado mayor, dos manados de yeguas mansas, y algun ganado menor de pelo y amas laboriar sus tierras para sus sucestencia, de lo que recivira gracia y merced.

Puerto de S'n Diego, 2o de Febrero de 1834.

SIVESTRO DE LA PORTILLA.

11 El interesante en esta instancia tiene los requisitos necesarios pa. ser atendido en su solicitud. El parage que pretende no esta comprendido en las veinte leguas limtrofes ni en las diez litorales, es parte de regadio temporal y abrevadero, es el camino pr. donde trafican los de la Sonora, sera util alli ese establecimiento pa. el ausilio de estos, pues esta interno al este como veinte y qt'ro leguas de este presidio, distante de la mission de S. Diego como viente y dos, y de la de San Luis como vente, y aunque en algun tiene pr. la de S. Diego á tenido alli bienes, pr. su larga distancia á tenido que sacarlos, ò no han estado bien ausilodos pr. el perjuicio de la gentilidad, que es pr. aquella parte bastante en numero pr. lo que soy de parecer, que establecibo alli este sitio y buscando de buena politica y armonia con ellos se haran mas tratalites y civilizados, por lo ql. en vista de lo espues.

[Sello tercero (place of a stamp in the original) dos reales.]

Para los años de mil ochocientos veinte y seis y ochocientos veinte y siete.

[SEAL.] Habilitado provisionalmente por la receptoria de alcalalas del p'to de S. Diego pr. los años de 1833 y 1834

ARONELLO.
S E. ARGUELLO.]

—to V. S. decretara lo ql. fuere de su superior agrado.
San Diego, Abril 8 de 1834.

SANTIAGO ARGUELLO.

(Here follows map, marked page 13.)

14 MISION DE S DIEGO, *Abril* 9 *de* 1834.

Certifico yo F. Fernando Martin, actual ministro de la mision de S'n Diego, como el parage que solicita el cindadano Silvestre de la Portilla no hay embarazo para ql. lo posea, por parte de esta mision de S'n Diego, con tal que se le conceda tambien parte de lo que se reconoce por parte de la mision de S'n Luis Rey, y para ql. conste en donde combenga lo firmo.

F. FERNANDO MARTIN.

MISION DE S'N LUIS REY, *Abril* 13*th de* 1834.

Se puede conceder al solicitante D'n Silvestre de la Portilla el parage de S'n José parte de el sin perjuicio de esta mision.

F. VICENTE PASQUAL SILVA.

(Here follows a sketch or map marked , original page 13.)

MONTEREY, *Junio* 10 *de* 1834.

Pase este expediente al comandante militar de San Diego ante quien la parte de D. Silvestre de la Portilla producirà una informacion de tres testigos idoneos que seran interregados sobre los puntos siguientes. 1o. Si el solicitante es cuidadano Mejicano por nacimiento, si es casada y tiene hijos, si es de buena conducta. 2o. Si el terreno qe. pretende, mision pertenece à la propiedad de algun particular, mision, pueblo, ò corporacion ; si es de regadio temporal ò abrevadero

15 y que estencion tendra. 3o. Si tiene bienes con que poblado ò posibilidad de adquirirlos, evacuados estas diligencias buelva este espediente para su resolucion. El S'r D'n José Figueroa, general de brigada comandante general, inspector y gefe superior politico del teritorio de la Alta California asi lo mandò decretó y firmo de que doy feé.

JOSÈ FIGUEROA.
AGUSTIN V. ZAMORANO, *S'rio.*

[SEAL.] Sello tercero, dos reales. Para los años de mil ochocientos veinte y seis y ochocientos veinte y siete.
[SEAL.] Habilitado provicionalmente por la receptoria de alcalalas
[SEAL.] N. del P'to du S'n Diego pr. los años de 1834 and 1835.

ARUELLO.
S. E. ARGUELLO.

En el Presidio de S. Diego à nuebe dias del mes de Julio del año de mil ochocientos treinta y cuatro. El comandante militar en cargado de los negocios civiles de este jurisdiccion en cumplimiente del superior decreto; que antecede del S'r comand'te g'ral y gefe superior politico de este territorio, de 10 de Junio pr. pp'or y habiendo
16 presentado, el interesado hay dia de la f'ha los testigos pa. la informacion qe. en el se fue biene fueron citados à el efecto—y pa. que consiste lo firmé con los testigos—de asistencia segun derecho, de qe. doy feé.

ARONELLO.

De ass'a:
José Ygn'o Ortega.
Franc'o Carrillo.

En el mismo dia, mes, y año, espresados ante el comandante militar comparesco el ciudadano Juan Osuna, quien fue.

Preguntande si conoce á Silvestre de la Portillo si es ciudadano Mejicano per nacim'to si es casado y tiene hijos y si es de buena conducta si el terreno del Valle de S. José pertenece á la propiedad de algun particular mision, pueblo, ó corporacion, si es de regadio temporal ò abrevadero, y que estencion tendra si tiene bienes de campo con que poblarlo ó posibilidad de adquirirlos.

Responde que conoce a Silvestre de la Portilla, hace el tiempo de cinco años pr. ciudadano Mejicano pr. nacionm'to, q. lo conoce pr. saltero y no casado, que es de buena conducta, que sabe que el paraje del valle esta cerca de la instancia de Sta. Ysabel, pero ql. no sabe á donde correspondra en la actualidad, que es de regadia temporal y abre-
18 vadero; que tendra de estencion poco mas ò menos como dos y media leguas deancho y largo. Que tiene bienes de campo pr. poblado y posibilidad pr. adquirirlos; y pa. ql. conste lo firmo el comandante militar con los testigos de asistencia de que doy feé.

ARONELLO.

De ass'a: José Ygnacio de Ortega.
De ass'a: Franc'o Ruis.

Ynmediamente ante el comandante—

Sello tercero, [SEAL,] dos reales.

Para años de mil ochocientos veinte y seis y ochocientos veinte y siete.

[SEAL.] Habilitado provicionalmente pr. la receptoria nacionales del
[SEAL.] p'to de S. Diego pr. los años de 1834 y 1835.

ARONELLO.
S. E. ARGUELLO.

—militar comparecio el ciudadano Juan Ma. Marron que fue preguntado si conoce à Silvestre de la Portilla pr. ciudadano Mejicano pr. nacimiento si es casado y tiene hijos, y si es de buena conducta, si el terreno del Valle de San José pertenece à la propiedad de algun particular, pueblo, mision, ó corporacion alguna, si es de regadio
19 temporal y abrevadero, y que estencion tendra, si tiene bienes de campo pr. poblado ō posibilidad pa. adquirirlos.

Responde que conoce á Silvestre de la Portilla pr. ciud'o Mejicano pr. nacimiento—

Sello tercero, [SEAL,] dos reales.

Para los años de mil ochocientos viente y seis y ochocientos viente y siete.

[SEAL.] Habilitado provicionalmente pr. la receptoria de alcabalas nacionales del p'to de S. Diego pr. los años de 1834 y 1835.

ARONELLO.
S. E. ARGUELLO.

—que es saltero, y de bueno conducta. Que sabe que el parage del Valle de San José pertenece á la mision de Sn. Diego, q. es de regadio temporal y abrevadero, que tendra de estencion como ocho leguas de largo y cinco de ancho, segun lo ha visto aunque no lo á reconocido.

Que tiene el interesado bienes de campo pa. poblado y posibilidad pa adquirirlos y pa. ql. conste lo firmo el comandante militar con los testigos de asistencia de que doy feé.

ARONELLO.

De ass'a: JOSE YGN'O ORTEGA.
De ass'a: FRANC'O RUIS.

20 En el mismo dia, mes, y año, ante el referido comandante militar comparecio el ciudadano Julio Oscuro quien fue.

Preguntado, se conoce á Silvestre de la Portilla pr. ciudadano Mejicana pa. nacimiento, si es casado con hijos y si es de buena conducta si el paraje del Valle de San José pertenece á la propiedad de algun particular, pueblo, mision, ó corporacion alguna, si es de regadio temporal y abrevadero y que estension tendra; si el interesado tiene bienes de campo pa. pablado ó posibilidad pr. adquirirlos.

Respondo que conoce á Silvestre de la Portilla pr. ciudadano Mejicano pr. nacimiento, saltero q. es de buena conducta. Que sabe que el Valle de San José pertenecer antes á la mision de San Diego, que es de regadio temporal y abrevadero ql. tendra de estencion poco mas ó menos como tres leguas, y lo mismo de ancho.

Que sabe tiene bienes de campo pr. poblado y posibilidad pr. adquirirlos; y pa. ql. conste la firmó el comandante militar con los testigos de asistencia de que doy fé.

ARONELLA.

De ass'a: José Yg'io de Ortega.
De ass'a: Fran'co Ruis.

Monterey, *Julio* 30 *de* 1834.

21 Vista la peticion con que da principio este *este* espediente el informe del comandante militar del pueblo de San Diego y los de los padres ministros de las missiones de San Diego y San Luis Rey las especiones de testigos con todo lo demas que se tubo presente y sur—

Sello Tercero, [seal,] dos reales.

Para los años de mil ochocientos veinta y seis y ochocientos veinte y siete.

[seal.] Habilitado provicionalmente pr. la receptoria de alcab'a
[seal.] nacionales del p'to de S'n Diego pa. los años de 1834, 1835.

ARONELLLO.

—convino de conformidad con las leyes y reglamentos de la materia, se declara el ciudadano Silvestre de la portillo dueño en propiedad del terreno conocido con el nombre del Valle de San José colindante con los missiones de San Diego y San Luis Rey. Y sujeto á las condicones ql. se estipularen; dirigase este espediente á la exma. deputacion pa. su aprobacion. El Sor. Don José Figueroa, general de brigada comandante general ynspector y gefe superior polico del territorio de la Alta California asi lo mandó decreto y firmo doy fe.

JOSE FIGUEROA.
AGUSTIN V. ZAMORANO, *S'rio.*

22 Monterey, *Julio* 30 *de* 1834.

En sesion de este dia acordio la E. deputacion por este espediente a los comisiones de colonizacion y terrenos baldios.

Figueroa. JOSÉ MARIA MALDONADO.

Exmo Senor: Las comisiones unidos de colonizacion y terreno valdios impuestos del espediente ql. se mando practicar pr. pretension ql. el ciud'o Silvestre de la Portillo hizo del parage nombrado Valle de San José y penetrada la comision pr. el conocimiento ql. tiene del espresado terreno ql. se halla todo ello ocupado con bienes y labores de las misiones de San Diego y San Luis Rey y ql. pa lo mismo estas Yuan a perjudicar si se le concede al solicitante dicho valle, y ademas ql. no hay una terminante oposicion de los m'tros respectivos a favor de Portillo pa. lo ql. creo la comision ql. solo han tratado d'hos m'tros de obsequiar respectos, es de opinion ql. no se adjudique pa. habora el terreno mencionado hasta que fiera pa. su naturelaza. En vista de lo espresado la commission presenta a la deliveracion de esta ex'mo deputacion la proposicion siguiente.

Se reserva el censo del espediente del ciud'o Silvestre de la Portillo promovido en solicitud del Valle de San José hasta que se
23 verifique la segularizacion de las misiones de la Alta California.
Monterey, Julio 3, de 1834.

CARLOS ANTO. CARRILLO.

José J. Ortega.
Jose A. Estrada.

Monterey, *Julio* 31 *de* 1834.

Dada cuenta a la E. deputacion en sesion de este dia con el dictamen antecedente, aprovo la unica proposicion en ql. concluye ql. dice.

Se reserva el curso del espediente del ciud'o Silvestre de la Portillo promovido en solicitud del Valle de S. José hasta que se verifique la secularizacion de misiones en la Alta California.

Y en su consecuencia se devuelve el espediente al S. Gefe Sup'r politico pa. la fue ql. estime conveniente.

Monterey, Julio 31 de 1834.

JOSÉ FIGUEROA.
JOSÉ MARIA MARRON, *S'rio.*

Sello cuarto de Oficio.

Habilitado provisionalmente por la administracion de la aduana maritima de Monterey de la Alta California pa. los años de mil ochocientos treinta y cuatro y mil ochocientos treinta y cinco.

Figueroa. A. RAMIREZ.

24 *S'or Comand'te G'ral Gefe Sup'r Politico de la Alta Calif'a.*

Monterey,
Nov. 6 *de* 1834.
De se cuenta con los antecedentes pa. resolver lo conveniente.

El ciudadano Silvestre de la Portilla vecino del Presidio de San Diego del mando de V. S. con el debido respeto que el derecho le permite ase presente: que en vista de hallarse en el dia con quinientes cabezas de ganado mayor quatro manados de yeguas docientos caballos y como novento bestias mulares recogidos, y no teniendo paraje en donde tener este numero de vienes para su seguridad y logio de ellos, y con motivo, ha haberse de tenido mi solicitud que tengo echa del sitio llamado el Balle de San José, y el hallarme con todo este numero de bienes recogidos, sin tener á donde ponerlos, me hallo en la suma necesidad de meterlos en dicho parage qr. no perderlos, creido de ql. no abra ningun obstaculo qa. ql. no se me concediera; pero hahora pro el oficio de V. S. veo que el espediente queda pendiente hasta la secularizacion de los misiones pro lo que suplier a V. S. se me conceda segun los referidos vienes de dicho parage hasta ver si se me concede en propiedad para no perderlos; de lo ql. recibiere gracia y merced.

S. Diego, 19 de Oct'bre de '836.

25 SILVESTRE DE LA PORTILLA.

Sello Cuarto de Oficio.

Habilitado provicionalmente por la administracion de la aduana maritima de Monterey, de la Alta California para los años de mil ochocientos treinta y cuatro y mil ochocientos treinta cinco.

A. RAMIREZ.

FIGUEROA.

Sello tercero dos reales.

Habilitado provisionalmente pro la administracion de la aduana maritima de Monterey de la Alta California para los años de mil ochocientos treinta y seis y mil ochocientos treinta y siete.

A. RAMIREZ.

GUTIERREZ.

MONTEREY, *Abril* 16 *de* 1836.

Vista la peticion con que da principio este espediente el informe del comand'te militar de S'n Diego ò el de los P. P. M. N. de S'n Diego ó San Luis Rey la espocision de testegos con todo lo demas que se tubo presente ó ver convino ó estando persuadidos de ql. las misiones nureca lo han necesitado pa. cuya causa se halla baldio, de conformidad con las leyes ó reglamentos de la materia se declara al ciud'o Silvestre de la Portilla dueño en propiedad del terreno conocido con el nombre del Valle de San José, a reserva de la aprobacion
26 de la ex'ma deputacion, El Señor Don Nicolas Gutierrez, teniente coronel comandante general é ynspector é gefe politico interiore.

Asi lo mando decreto y firmo, de que doy fee.

NICOLAS GUTIERREZ.
FR'CO DEL CASTILLO NEGRETTE, *S'rio.*

En 31 de Mayo paso á la comision de terreno.

MALDONADO.

EX'MO SOR: La comision de terrenos baldios impuesta del expediente q. se mando practicar á peticion del ciud'o Silvestre de la Portillo del parage nombrado S. José no encontrando en el objeccion alguna q. hacen siendo en todo conforme al art'o 5 del regla—

Sello tercero dos reales. Habilitado provicionalmente por la administracion de la aduana maritima de Monterey de la Alta California para los años de mil ochocientos treinta y seis y mil ochocientos treinta y siete.

GUTIERREZ. A. RAMIREZ.

—mento de 21 de N'bre de 1828 y á la ley de 17 de Agosto de 1824, ofrece á la deliberacion de V. E. la proposicion siguiente.

Se apruceba la comision hecha el ciud'o Silvestre de la Portillo del parage nombrado S. José concedido en 16 de Abril de '836.

Monterey, 11 de Junio de 1836.

27 JOSE ANT'O DE LA GUERRA Y CARRILLO.
J'NE JOAQUIN GOMEZ.

MONTEREY, *Julio* 1o *de* 1836.

En sesion de este dia valdio á la comision pa. su reforma.

MALDONADO, *S'rio*

OFFICE OF SURVEYOR GENERAL
OF THE UNITED STATES FOR CALIFORNIA.

I, John C. Hays, surveyor general of the United States for the State of California, and, as such, having in my office and in my charge and custody a portion of the archives of the former Spanish and Mexican territory or department of Upper California, by virtue of the power vested in me by law, do hereby certify that the twenty-five preceding and hereunto annexed pages of tracing paper, numbered from 1 to 25, inclusive, exhibit a true and accurate copy of a certain document now on file and forming part of the said archives in this office.

In testimony whereof I have hereunto signed my name officially, and caused my seal of office to be affixed at the city of San [SEAL.] Francisco, this seventh day of October, A. D. 1853.

(Signed) JOHN C. HAYS,
U. S. Surveyor General for California.

28 Extract from the 2nd section of the act of Congress providing for the survey of public lands in California, and for other purposes, approved March 3d, 1853.

"The Secretary of the Interior is hereby authorized to cause an official seal to be prepared for the office of the said surveyor general, (California,) and any copy or extract from the plat, field-notes, and other records and documents on file in his office, when attested as such by the said seal and the signature of the surveyor general, shall in all judicial matters have the same force and effect as the original."

Filed in office February 13th, 1854.

GEO. FISHER, *Sec'y.*

30 *Translation of espediente.*

Third seal { Place for a seal in the original. } Two reals.

For the years eighteen hundred and twenty-six and twenty-seven.

Provisionally authorized by the delegated excise officers of the port of San Diego, for the years 1833 and 1834.

ARGUELLO.
S. E. ARGUELLO.

To the brigadier general and superior political chief of the territory:

The citzen Silvestre de la Portillo, with due respect, appears before you, and says that he is a native of the town of Fuerte, in the state of Sonora, and established some five years in the port of San Diego, under your jurisdiction; having certain cattle, without a place to put them in security to reap the benefit of their increase, he hopes, from your kindness, that you will grant him the place called el Valle de San José, laying on the eastern side the road of the Rio Colorado,

distant about twenty-two leagues from the mission of San Diego, and twenty or twenty-one from that of San Luis Rey, without prejudice to other lands which have always remained vacant; and, besides, said land contains a stream and various watering places. The valley is rather spacious; wherefore he humbly prays that you may have the kindness to grant him the aforesaid Valle de San José to place thereon four hundred head of neat cattle, two droves of tame mares, besides a few sheep, and to cultivate the land; whereby he will receive favor and bountifulness.

Port of San Diego, February 20th, 1834.

SILVESTRE DE LA PORTILLO.

PUEBLO DE LOS ANGELOS, *March* 6, 1834.

Agreeably to the laws relative to the subject, the military commandant of the port of San Diego will report whether the petitioner possesses the necessary qualifications to be heard in the premises; if the land prayed for is within the twenty border leagues and the ten littoral ones referred to in the law of August 18th, 1834; if it is (deregadio) irrigable, (temporal) arrable, (abrevadero) watered; if it is private property, corporation, or public land; together with all that may be necessary to throw light on the subject, obtaining that the present, a sketch, which he shall annex to these proceedings, (espediente;) all of this being accomplished, these proceedings (espediente) shall be handed to the reverend fathers, ministers of the mission of San Diego and San Luis Rey, in order that they may report on the subject which appertains to them. Don José Figueroa, brigadier general of the United States of Mexico, commandant general and political and superior chief of the territory of Upper California, thus ordered, decreed, and signed.

In witness whereof,

JOSÉ FIGUEROA.

In the absence of the secretary,

BERNARDO NAVAREETO.

The petitioner herein possesses the necessary qualifications to obtain what he prays for. The land which he solicits is not within the twenty border leagues, nor within the ten littoral, and is in part irrigable, arrable, and watered land; it is on the road by which the Sonoranians trade; his establishment there will be useful for their protection. It is in the interior, towards the coast, at twenty-four leagues from the presidio, distant about twenty leagues from the
32 mission of San Diego, and twenty from that of San Luis Rey; and although, at a certain time, the mission of San Diego had thereon certain property, it was compelled to withdraw them on account of the great distance to it, and because they were not all attended to, on account of the damage made by the Indians, which are, in that part of the country, are rather numerous; according to appearances, the establishing of that place, and practicing good policy and harmony, the Indians may become more manageable and civilized. In view of the foregoing you may decree whatever may be your superior will.

San Diego, April 8th, 1834.

SANTIAGO ARGUELLO.

Third seal, [seal,] two reals, for the years eighteen hundred and twenty-six and twenty-seven.

[SEAL] Provisionally authorized by the delegated officer of the port of Monterey, for the years 1833 and 1834.

ARONELLO.

[SEAL] S. E. ARGUELLO.

MISSION OF SAN DIEGO, *April 3d*, 1833.

I, Fernando Martin, residing and acting minister of the
33 mission of San Diego, certify that there is no difficulty for the citizen Silvestre de la Portillo to possess the land he prays for, so far as it concerns this mission of San Diego, provided, that the part recognized as belonging to the mission be also granted to him.

FERDINANDO MARTIN.

MISSION OF SAN LUIS REY, *April* 13, 1834.

Part of the land of San José may be granted to the petitioner, Silvestre de la Portillo, without prejudice to this mission.

In testimony whereof I have affixed my signature.

VICENTE PASCAL OLIVA.

(Herein comes the sketch.)

MONTEREY, *June 10th*, 1834.

Let this espediente be sent to the military commandant of San Diego, to whom the party, Don Silvestre de la Portillo, shall produce the testimony of three proper witnesses, who will be interrogated on the following points: 1st. If the petitioner is a citizen Mexican by birth; if he is married, and has children; if he is of a good character. 2d. If the land prayed for is the property of any individual, mission, town, or corporation; if it is irrigable, watered, or arable land, and the size of it. 3d. If he has property to put on it; whether there is any possibility for him to acquire any. These formalities being performed, let these proceedings (espediente) be returned for their
34 execution. José Figueroa, brigadier general, commandante general, inspector superior, and political chief of the territory of Upper California, thus has ordered, decreed, and signed. In witness whereof—

JOSÉ FIGUEROA.

AGUSTIN V. ZAMORANO.

Third seal, [SEAL,] two reales.

For the years eighteen hundred and twenty-six and eighteen hundred and twenty-seven.

[SEAL.] Provisionally authorized by the delegated excise officer of the port of San Diego, for the years 1834 and 1835.

ARONELLO.

S. E. ARGUELLO.

Presidio of San Diego, on the ninth day of July, 1834. The military commandant having charge of the civil duties of this jurisdiction,

with the superior foregoing decree of the general commandant, superior and political chief of this territory, of the tenth of June last past, and the petitioner having this day presented the witnesses subpœned for the investigation required by said decree. In witness whereof I have affixed my signature, together with the assisting witnesses.

ARGUELLO.

Witnesses:
JOSÉ YGNACIO ORTEGA.
FRANCISCO RUIZ.

On the same day, month, and year above expressed, before the military comandant appeared the citizen Juan Osuna, whom being interrogated as to whether he knew Silvestre de la Portilla;
35 whether he was a native-born Mexican citizen; whether he was married and had children; whether he had a good character; whether the land of Valle de San José belonged to any particular individual, mission, or corporation; whether said land is irrigable, watered, or arrable; what size it was; whether he had any cattle to put on it, or whether he could acquire any, answered that he knew Silvestre de la Portillo since five years as being a native-born Mexican citizen; that he is a bachelor and enjoys a good character; that he knows that the land of the valley is near the extension of Sta. Isabel, but does not know the exact locality; that it is irrigable, watered, and arable; that its size is about two and a half leagues, more or less; that he has cattle to put thereon, and means to acquire some.

In witness whereof the military comandant affixed his signature with the witnesses.

ARGUELLO.

Witnesses:
JOSÉ YGNACIO ORTEGA.
FR'CO RUIZ.

Immediately thereafter, before the military commandant, appeared the citizen Juan Maria Marron, who being examined as to whether he knew Silvestre de la Portillo to be a Mexican citizen by birth; if he was married and had children; if he enjoyed a good character; if the land of Valle de San José was the property of any individual, town, mission, or corporation; if it was irrigable, watered, or arable land; what was its size; if said Silvestre de la Portillo had cattle
36 to put thereon, or whether he could acquire any, said that he knew Silvestre de la Portillo to be a native-born Mexican citizen; that he is a bachelor and enjoys a good character; that he knows that the valley of San José belongs to the mission of San Diego; that it is irrigable, watered, and arable land; that it is eight leagues long by five in width, as it appeared to him, although he has not ascertained it; that the petitioner owns cattle to put on it, and can acquire some. In witness wereof I have hereunto affixed my signature with the assisting witnesses.

ARGUELLO.

JOSÉ YGNACIO ORTEGA.
F'CO. P. RUIZ.

On the same day, month, and year before mentioned, before me, the above-mentioned military commandant, appeared the citizen Julio Ocuna, who being asked whether he know Silvestre de la Portillo to be a native-born Mexican citizen, whether he was married and had children, and whether he enjoyed a good reputation; if the land of Valle de San José belongs to any individual, pueblo, mission, or corporation; if it is irrigable, watered, or arable land; whether he knew the size of it; if the petitioner had any cattle to put on it, or whether he could acquire any, answered: That he knew Silvestre de la Portillo to be a native-born Mexican citizen; that he enjoys a good reputation; that he knows the Valle de San José once belonged to the mission of San Diego; that the land is irrigable, watered, and arable; that its size is about three leagues, more or less, in width and
37 breadth; that he knows that said Silvestre de la Portillo has cattle to put on it, and can acquire some.

In witness whereof, the military commandant affixed his signature with the assisting witnesses.

ARGUELLO.

Witnesses:

JOSÉ YGNACIO ORTEGA.
F'CO RUIZ.

MONTEREY, *July 30th*, 1834.

In consideration of the petition beginning this espediente the report of the military commandant of the port of San Diego, those of the reverend fathers, ministers of the missions of San Diego and San Luis Rey, the testimony of witnesses and the other formalities required by law and regulations, the citizen Silvestre de la Portillo is declared the owner of the land known by the name of Valle de San José, bounded by the missions of San José and San Luis Rey, subject to the conditions which will be stipulated. Let those proceedings (espediente) be directed to the deputation for its approval. Don José Figueroa, brigadier general, commandant, inspector, and political superior chief of the territory of Upper California, thus has ordered, decreed, and signed. In witness whereof,

JOSÉ FIGUEROA.
AGUSTIN V. ZAMORANO.

38 MONTEREY, *July 30th*, 1834.

In the session of this day the territorial deputation decrees that these proceedings (espediente) be referred to the commission for colonization and vacant lands.

FIGUEROA.

JOSE MARIA MALDONADO, *Secretary.*

The united commission for colonization and vacant lands having examined the proceedings (espediente) to be executed in relation to the Valle de San José, prayed for by Silvestre de la Portilla, and the said commission aware of the facts in relation to said land, that it is all occupied with the property of the mission of San Diego and San Luis Rey, and their agricultural improvements, which would go to de-

struction if said valley was granted to the petitioner; and besides, there not being a conclusive report on the part of the respective ministers in favor of said Portillo, hence the commission believe that said ministers reported only through obsequiousness; therefore they are of opinion that said land be not granted, but only when the missions will be secularized and be preferred on account of their natural usefulness; therefore the commission presents to the examination of the deputation the following propositions:

That the execution of the proceedings (espediente) of the citizen Silvestre de la Portillo, instituted for the grant of the Valle de San José, be delayed until the secularization of the missions of Upper California be verified.

Monterey, 31st July, 1834.

CARLOS ANT'O CARRILLO.
JOSÉ F. ORTEGA.
JOSÉ A. ESTUDILLO.

39 MONTEREY, *July* 31*st*, 1834.

On the session of this day the above order was submitted to the deputation, which approved the only proposition, which is in the following words:

That the execution of the proceedings (espediente) of the citizen Silvestre de la Portillo, instituted for the grant of the Valle of San José, be delayed until the secularization of the missions of Upper California be verified. Wherefore the espediente is returned to the superior and political chief for the determination which he will think proper.

JOSÉ FIGUEROA.

JOSÉ MARIA MALDONADO. *Secretary.*

MONTEREY, *August* 1*st*, 1834.

Let the citizen Silvestre de la Portillo be notified of the decree of the territorial deputation of the 31st July last, in reference to his prayer for the grant of the land of the Valle of San José, and let the espediente be reserved until due time. Don José Figueroa, brigadier general, commandant general, and political and superior chief of the territory of Alta California, thus has ordered, decreed, and signed. In faith whereof,

JOSÉ FIGUEROA.

AGUSTIN V. ZAMORANO, *Secretary.*

Fourth seal of office.

Provisionally authorized by the administration of the maritime custom-house of Monterey, of Upper California, for the years
40 eighteen hundred and twenty-four and twenty-five.

FIGUEROA.
A. RAMIREZ.

To the general commandant, political and superior chief of the Upper California:

MONTEREY, *Nov. 6th*, 1834.

Let report be made on the within, that proper steps be taken.

FIGUEROA.
(Flourish)

The citizen Silvestre de la Portilla, resident of the presidio of San Diego, under your orders, with due respect as required by law, represents, that finding himself this day with five hundred head of neat cattle, four droves of mares, two hundred horses, and about ninety choice mules, and having no place to keep that number of cattle in security and derive any benefit therefrom, and on account of the delay of the prayer I made for the grant of the place called the Valle de San José, and finding myself with that number of choice cattle without any place to put them, I find myself in the great necessity of putting them on said place so as not to lose them. I believed there would be no difficulty in obtaining the grant thereof. But now, by your decree, I see that the espediente remains unexecuted until the secularization of the mission, whereof I pray you to allow me to water the aforesaid cattle on said land, so as not to lose them, until it be ascertained whether it can be granted to me, wherefore I shall receive favor and bountifulness.

San Diego, Octo. 19th, 1834.

SILVESTRE DE LA PORTILLO.

41 Third seal, two reales.

Provisionally authorized by the administration of the maritime custom-house of Monterey, Upper California, for the years eighteen hundred and thirty-six and thirty-seven.

GUTIERREZ.
A. RAMIREZ.

MONTEREY, *April 16th*, 1836.

In view of the petition authorizing these proceedings, (espediente,) the report of the military commandant of San Diego and that of the fathers ministers of San Diego and San Luis Rey, the testimony of the witnesses and all the other necessary proceedings, and being convinced that the missions will never require the land prayed for, for which reason it will remain vacant, agreeably to the laws and reglations on the matter, the citizen Silvestre de la Portilla is declared the owner of the land known by the name of the Valle de San José, subject to the approval of the territorial deputation.

DON NICOLAS GUTIERREZ.

F'CO DEL CASTILLO NEGRETTE, *Secretary.*

On the 31st of May the foregoing was submitted to the commissioner on lands.

MALDONADO, *Secretary.*

To his excellency:

The committee on vacant lands having examined the proceeding, (espediente,) to whom was referred the petition of the citizen Silvestre de la Portillo, praying for the land called the Valle de San José, seeing no objection to make it, being altogether in con-

42 formity with the art. 8th of the regulations of the 21st of November, 1828, and the law of the 18th August, 1834, we offer to your consideration the following proposition:

That the grant made to the citizen Silvestre de la Portilla on the 16th of April, '36, of the land called San José, be approved.

Monterey, June 11th, 1836.

JOSE ANTO. B. DE LA GUERRA Y CARRILLA.
JOSE JOAQUIN GOMEZ.

MONTEREY, *July 1st*, 1836.

In the session of this day returned to the commission, to be by them referred.

MALDONADO, *Secretary.*

Filed in office Feb. 13, 1854.

GEO. FISHER, *Sec'y.*

43

Document "H. H., No. 1," ann'd to the deposition of S. Arguello.

44 Sello primero—Seis pesos.

Habilitado provisionalmente por la administracion de la aduana maritima de Monterey de la Alta California para los años de mil ochocientos treinta y cuatro y ochocientos treinta y cinco.

FIGUEROA.
A. RAMIREZ

Revalidado para el bienio de 1836 y 1837.

GUTIERREZ.
A. RAMIREZ.

Nicolas Gutierrez, teniente coronel de caballeria permanente, commandante general, inspector y gefe politico, interino del Territorio de la Alta California:

Por cuanto el Co. Silvestre de la Portilla Mejicana por nacimiento ha pretendido para su benificio personal y el de su familia el terreno conocido con el nombre de Sn. José, practicadas previamente las diligencias y averiguaciones segun lo dispuesto por las leyes y reglamentos de la materia, usando de las facultades que me son conferidas en decreto de este dia y á nombre de la nacion Mejicana he venido en concederle el mencionado terreno declarandoles la propiedad de el por las presentas letras á reserva de la aprovacion de la exma. deputacion y bajo las condiciones siguientes. [SEAL.]

1a. Que se someterá á las que estableciere el reglamento que se ha de formar, para la distribucion de terrenos baldios y que entretanto ni el agraciado ni sus herederos podran dividir ni enagenar el que se le adjudica un poner censo, vinculo, fianza hipoteca ni otro grava-

45 men aunque sea por cansa piadosa ni pasarlo á manos muertas.

2a. Podrá cercarlo sin perjudicar las travesias caminos y servidumbres; lo disfrutarán libre y esclusivamente destinandolo al uso y cultivo que mas le acomode pero dentro de un año á lo mas fabricara casa y estara habitada.

3o. Solicitara del juez respectivo, que le dé la posecion juridica en virtud de este despacho por el cual se demarcaran los linderos en cuyos limites pondrá á mas de los majoneras algunos arboles frutales ó silvestres de alguna utilidad.

4a. El terreno de que se hace donacion es de cuatro sitios de ganado mayor en el Valle de Sn. José segun esplica el diseño que corre en el espediente. El juez que diere la posesion lo hará medir conforme á ordenanza quedando el sobrante que resulte á la nacion para los usos convenientes.

5a. Si contraviniere á estas condiciones perderá su derecho al terreno y será denunciable por otro.

En consecuencia mando que serviendole de titulo el presente y teniendose por firmé y valedero se tome razon de el en el libro que corresponde y se entregue al interesado para su resguardo y demas fines. Dado en Monterey á diez y seis Abril de mil ochocientos treinta y seis.

NICOLAS GUTIERREZ.
F'CO DEL CASTILLO NEGRETE, *S'rio.*

46 Queda tomado razon á fojas 108 y Senalado Conel No. 104 del libro que corresponde y obra en el archivo de la Secretaria de mi cargo.

Monterey, Abril dioz y seis de mil ochocientos treinta y seis.
Dros., $10. CASTILLO

Santiago Arguello, capt. retirado y alcalde const'l de la municipalidad de San Diego—

Certifico en toda forma ql. habiendo presentado el Cap'n D. Pablo de la Portilla como apoderado de su hermano D. Silvestre de la Portilla el titulo ql. antecede, prosedi con arreglo al arto. 3o. á darle la posesion juridica y conforme al arto. 4o. y habiendose practicado lo prevenido en d'hos dos artos. con asistencia de las personas ql. la mision de S. Diego y S. Luis Rey pusieron de su parte y concluidas las medidas ql. se previenen de la posesion a nombre de la nacion Mejicana y á presencia de los concurrentes en aquel parage al citado Capitan D. Pablo de la Portilla, con arreglo a lo ql. se previene en estos casos; siendo advertencia que mil cuatrocientos cincuenta varas ql. le tocaban la parte del corrido las sedio a pedomto. del admor. de S. Diego, quedando hta. donde se estendra está medida la cañada Matafuay, y de consigte. queda dentro del citio pr. ni habere aumentado las otras medidas ql. le corresponden las mil cuatrocientos cincuenta varas ya citadas; y pa. la debida constancia estiendo la presente en S.
47 José del Valle a primero de Agto. de mil O. cientos treinta y seis, firmando con migo los testigos de asistencia ql. dan fée segun derecho á falta de escribano publico en el lugar.

S. AROUELLO.

Assa: ROSARIO MORENO.
Assa:

(Valle de San José, original grant and juridical possession, B.

Filed in office November 8th, 1852.

GEO. FISHER, *Sec'y.*

48 *Translation of original grant "C."*

First seal—Two reals.

Legally authorized by the maritime custom-house of Monterey, in the Upper California, for the years 1834 and 1835.

RAMIREZ.
FIGUEROA.

Vall'd for the years 1836 and 1837.

GUTIERREZ.
RAMIREZ.

Nicolas Gutierrez, lieutenant colonel of the regular cavalry, general commandant, inspector and political chief pro tem. of the Territory of California:

Inasmuch as the citizen, Silvestre de la Portilla, Mexican by birth, has prayed, for his personal benefit and that of his family, for the land known as San José, the formalities having been previously performed according to the disposition and regulations regulating the matter and using the faculties which are conferred to me as per decree dated this day, and in the name of the Mexican nation, I have granted to him the land above mentioned, declaring it his property in virtue of these presents, subject to the approval of the departmental assembly and under the following conditions:

1st. That he will submit himself to what may be established in the regulations which are to be adopted for the granting of vacant lands. In the meanwhile, neither the grantee nor his heirs shall divide nor alienate the land granted, nor rent, give in security, mortgage, nor otherwise encumber the same, although it be for religious purposes, nor place it under mortmain.

49 2d. He may enclose the said land without injuring the roads and servitudes; he may cultivate it freely and exclusively, applying it to the use which to him shall appear best, but within a year at most he shall build a house and shall occupy it.

3rd. He shall solicit the proper judge that judicial possession be given him in virtue of this order, for which purpose the boundaries shall be laid off; besides the boundary stakes, fruit or other useful trees shall be placed.

4th. The land hereby granted is of four square leagues of pasture land (ganado mayor) in the valley of San José, according to the design which accompanies the grant. The judge who will give the possession shall have it measured according to the regulations; the surplus land to remain to the nation.

5th. In case of contravention to these conditions he shall lose the right to the land which may be granted to others. Therefore I order that this being his title, and being held as firm and valid, entry thereof be made in the proper book, and it be handed to the interested party for his protection and other ends.

Given in Monterey the 16th April, 1836.

NICOLAS GUTIERREZ.
FRANCISCO DEL CASTILLO NEGRETE,
Secretary.

Entry hereof has been made on page 108 and numbered 104 on the proper book in the archives of the office under my charge.

Monterey, 16th of April, 1836.

CASTILLO.

50 Santiago Arguello, capitan out of service and constitutional alcalde of the municipality of San Diego, certify in due form that Captain Dn. Pablo de la Portilla, as agent of his brother, Dn. Silvestre, having presented the above title, proceeded. according to the 3d article, to give him judicial possession, agreeably to the 4th article, having observed the provisiones of the aforesaid two articles, with the assistance of the person whom the mission of San Diego and San Luis Rey sent in their behalf; and the measuring being terminated, I gave the possession in the name of the Mexican nation, and in presence of the parties present, to the aforesaid Dn. Pablo de la Portilla, according to what is customary in such cases. Notice being given that 1,450 varas, which were his on the side of the carrizo, he transferred them to the administrator of San Diego on his demand, terminating at the date called Matafuay, the place where this measurement extended, and consequently which date is within the ceded land, it not having been increased on the other lines, to give him the 1,450 varas referred to, which appertains to him according to the same measurement.

And in evidence hereof, I grant the present, in San José del Valle, the 1st of August, 1836, signing with me the assisting witnesses, who certify hereto, according to law, for want of a public notary in the place.

SANTIAGO ARGUELLO.

Witness: ROSARIO MORENO.

Filed in office Nov. 8th, 1852.

GEO. FISHER, *Sec'y.*

52 *Opinion of the board.*

SILVESTRE DE LA PORTILLA *vs.* THE UNITED STATES. } For the place called the Valle de San José, in San Diego county, containing four square leagues of land.

The petitioner claims title under a grant which he has given in evidence, duly authenticated, made to him by Nicolas Gutierrez, political chief of California, on the 16th day of April, 1836. It appears by the espediente, a traced copy of which is filed in the case, that a decree of concession was made by Figueroa on the 30th day of July, 1834, which the territorial deputation refused to approve on the ground that the premises were occupied by the missions of San Diego and San Luis Rey. The subject was postponed, by the resolution of the deputation, "until the secularization of the missions of Upper California be verified." This is succeeded in the espediente by the decree of concession made by Gutierrez, and bearing date April 16th, 1836, the day of the date of the grant which is produced in evidence. This concession, it

1723

appears by the record, was referred to the territorial deputation; a favorable report was made by a committee of that body, but it was recommitted "to be referred," and nothing further appears on the subject. The testimony shows that the petitioner occupied and lived on the premises from 1834 or 1835 until 1836 or 1837. Whether any part of this time was, in fact, after the grant was obtained is left in doubt. The place was afterwards occupied by Joaquin Ortega, and subsequently by Juan Warner, but whether they claimed under
53 the petitioner or by another title adverse to him is not shown.

It is, at least, doubtful whether this proof does not show defects in the petitioner's claim to an equitable title, which must defeat his application. Another insuperable objection to a confirmation, however, renders an examination of this question unnecessary. In his petition for the concession the applicant solicited a grant of the place called Valle de San José, without giving the boundaries or the quantity of land. In the course of the investigation, preliminary to the grant, one witness swore that the valley was eight leagues long by five in width, and one witness stated that the premises were three leagues wide by the same in breadth. The grant describes the land granted as that known as San José, and the description in the condition of the grant restricts it to "four square leagues of pasture land in the valley of San José," according to the design which accompanies the grant. The map attached to the espediente gives no definite limits to the land granted. Juridical possession was required to be obtained by the grantee, the surplus land to remain the property of the nation. It is evident, from these documents, that the valley of San José contains a much larger tract of land than was conceded to the petitioner; that he was entitled, under his grant, to four square leagues only of the land; that the quantity conceeded was to be located in the valley; that the act of a judicial officer was required to make the location; that until this was done the grantee's title at-
54 tached to no specified portion of the public domain, and without it no part of the land was seperated from the national territory, and no portion defined by metes and bounds so as to entitle the grantee to a confirmation of it.

There is a testimonial of judicial possession filed in the case, purporting to have been made by Santiago Arguello as alcalde, but it gives no measurement or description of the land. He certifies that he put the grantee into possession of the premises, but does not designate in any manner the land of which he gave possession. He states that notice was given that a small piece of the premises, 1,450 varas in extent, was transferred by the grantee to the administrator of the missions; but there is nothing in his description of it which aids in defining the limits or segregating any portion of the land from the national domain, in satisfaction of the inceptive grant to the petitioner, and the case falls within the rule so often laid down by the Supreme Court of the United States, that no confirmation can be had where there is no defined limits to land conceeded, and no segregation of it from the national domain.

The claim must therefore be rejected. Rejected.

Filed in office Feb'y 21st, 1854.

55 *Decree.*

SILVESTRE DE LA PORTILLA
vs.
THE UNITED STATES.

In this case, on hearing the proof and allegations, it is adjudged by the commission that the said claim of the petitioner is not valid, and his application for a confirmation thereof is therefore denied.

ALPHEUS FELCH,
THOMPSON CAMPBELL,
R. AUG. THOMPSON,
Commissioners.

Filed in office Feb'y 21st, 1854.

GEO. FISHER, *Sec'y.*

Order.

And it appearing to the satisfaction of this board that the land hereby adjudicated is situated in the southern district of California, it is hereby ordered that two transcripts of the proceedings and of the decision in this case, and of the papers and evidence upon which the same are founded, be made out and duly certified by the secretary—one of which transcripts shall be filed with the clerk of the United States district court for the southern district of California, and the other be transmitted to the Attorney General of the United States.

56 OFFICE OF THE BOARD OF COMMISSIONERS TO ASCERTAIN AND SETTLE THE PRIVATE LAND CLAIMS IN THE STATE OF CALIFORNIA.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing forty-two pages, numbered from 1 to 42, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings and of the decision of the said board of the documentary evidence, and of the testimony of the witnesses upon which the same is founded, on file in this office, in case No. 469 on the docket of the said board, wherein Silvestre de la Portilla is the claimant, against the United States, for the place known by the name of Valle de San José.

In testimony whereof, I hereunto set my hand and affix my private seal (not having a seal of office,) at San Francisco, California this thirteth day of October, A. D. 1854, and of the independence of the United States of America the seventy-ninth.

[SEAL.]

GEO. FISHER, *Sec'y.*

Filed November 8th, 1854.

C. E. CARR, *Cl'k.*

57 *Notice of appeal by claimant.*

United States district court for the southern district of California.

SILVESTRE DE LA PORTILLA, appellant, *vs.* THE UNITED STATES, appellee. } Notice of intention to prosecute the appeal from the decision of the board of land commissioners.

Silvestre de la Portilla, claimant of the land known as the Rancho of the Valle of San José, in the county of San Diego, and the southern district of California, hereby give notice of his intention to prosecute his appeal from the decision of the board of land commissioners rendered in his claim for the said land, which was presented before the said board of commissioners and by them rejected.

This claim being that which is numbered No. 521, the manuscript whereof is filed in this office.

N. HUBERT,
Attorney for Petitioners.

Filed Feb'y 5th, 1855.

58 C. E. CARR, *Cl'k.*

59 *Appeal notice by U. States.*

OFFICE OF THE ATTORNEY GENERAL OF THE UNITED STATES,
Washington, 17th January, 1855.

SILVESTRE DE LA PORTILLA *vs.* THE UNITED STATES. } 469.

You will please take notice that in the above case, decided by the commissioners to ascertain and settle private land claims in the State of California in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 28th day of September, 1854, the appeal in the district court of the United States for the southern district of California will be prosecuted by the United States.

C. CUSHING,
Attorney General.

Filed March 8th, 1855.

C. E. CARR, *Cl'k.*

60 *Petition.*

United States district court for the southern district of California.

SILVESTRE DE LA PORTILLA, appellant, *vs.* THE UNITED STATES, appellee. } Petition of the appellant, praying the court to review the decision of the United States land commissioners.

Your petitioner, Silvestre de la Portilla, respectfully show unto this honorable court that, on his petition to the proper Mexican

authorities, Nicolas Gutierrez, governor of Upper California, on or about the 16th of April, A. D. 1836, did grant unto him a certain tract of land or rancho of four leagues square in Upper California, county of San Diego, called El Valle de San José, juridical possession whereof was given him on the first of August, 1836.

That your petitioner has improved, cultivated, and stocked with cattle said rancho, and resided thereon according to law.

That said rancho or tract of land is situated in the southern district of California.

Your petitioner further show that on the 8th day of November, A. D. 1852, he presented his claim for the said four leagues of land before the United States land commissioners appointed under the act of Congress passed on the 3d of March, 1851, entitled An act to ascertain and settle the private land claims in the State of California, when sitting as a board, and prayed the said board to confirm his title. That on the 21st day of February, A. D 1854, the said board of commissioners decided upon the validity of your petitioner's
61 claim and rejected it.

Your petitioner pray that a transcript of the record of the board of commissioners on the claim presented to them, as aforesaid, and of the documentary evidence and testimony of the witnesses on which it was founded, which is filed with the clerk of this court, as directed by the 13th section of the act of Congress passed on the 31st of August, 1852, entitled An act making appropriations for the civil and diplomatic expenses of the government for the year ending the 30th of June, 1853, and for other purposes, may be considered as part of this petition.

Wherefore your petitioner, appealing from said decision of the board of commissioners, present this petition to the honorable the district court in which the land is situated; and he prays this honorable court to review the said decision of the said board of commissioners, and to decide upon the validity of his claim.

N. HUBERT,
Attorney for Petitioner.

Filed Feb'y 5, 1855.

C. E. CARR, *Clk.*

62 *Answer of U. S. dist. att'y.*

In the district court of the United States for the southern district of California, Los Angeles, Los Angeles county.

SILVESTRE DE LA PORTILLA, appellant, *vs.* THE UNITED STATES, appellee.	No. 469 of transcript.—Answer to the petition of the appellant praying the court to review the decision of the United States land commission.

The answer of Pacificus Ord, attorney of the United States for the southern district of California, in behalf of the United States, to the petition of Silvestre de la Portilla (filed February 5th, 1855,) claiming

a certain tract of land or rancho of four leagues square in Upper California, county of San Diego, called "Valle de San José" and alleging that on the 8th day of November, A. D. 1852, he presented his claim for the said four leagues of land before the United States land commissioners, appointed under the act of Congress passed on the 3rd of March, 1851, entitled "An act to ascertain and settle the private land claims in the State of California," when sitting as a board, and prayed the said board to confirm his title. That on the 21st day of February, A. D. 1854, the said board of commissioners decided upon the validity of his claim and rejected it; and praying this honorable court to review the said decision of the said board of commissioners, and to decide upon the validity of his claim.

And the said attorney, answering said petition in behalf of the United States, denies, generally, all and singular, each and every
63 allegation in the said petition contained; and denies specially, "that on his petition to the proper Mexican authorities, Nicolas Gutierrez, governor of California, on or about the 16th of April, A. D. 1836, did grant unto him a certain tract of land, or rancho of four leagues square, in Upper California, county of San Diego, called "El Valle de San José," juridical possession whereof was given him on the first of August, 1836; that your petition has improved, cultivated and stocked with cattle said rancho, and resided thereon according to law, as alleged in said petition.

And the said attorney of the United States, in pursuance of the provisions of the said act of Congress of the 3rd of March, 1851, herein fully sets forth the grounds on which the said claim is invalid, to wit:

I. That the said alleged grant of Nicolas Gutierrez, dated on or about the 16th of April, A. D. 1836, was made in violation of the 4th article of the colonization law of Mexico, of the 18th of August, A. D. 1824, in this: that the land granted, as alleged by claimant, was and is within ten leagues of the sea-coast, and there is no evidence shown by said claimant that the supreme general executive power of Mexico, previously approved of the colonization of the public lands in Upper California, lying within ten leagues of the sea-coast; and it is denied that the previous consent of said supreme general executive power of Mexico, in such case, was ever had.

II. That at the date of the said alleged grant the said land was occupied by the mission of the Territory of Upper California,
64 and particularly by the missions of San Diego and San Luis Rey, with valuable improvements thereon.

III. That the said alleged grant has not the conditions required by, and is not made in entire conformity with, the said law of Mexico, of the 18th of August, A. D. 1824, and the regulation for the colonization of the territories of Mexico, of the 21st of November, 1828.

IV. That the said claimant had not, at the time of the presentation of his claim to the said commissioners, nor has he now, any right, title, or interest in the said land, alleged to have been granted to him as aforesaid. That if he ever had any grant for, and any right, title, or interest in, said land, he transferred or alienated the same to one José Joaquin Ortega on or about the year A. D. 1838, and the said claimant, by so alienating said land, violated the conditions of the said

alleged grant, which prohibited the alienation of said land; and he therefore lost his right to the said land, if he ever had any.

V. That the said alleged grant of Nicolas Gutierrez to said claimant, dated the 16th of April, 1836, contains no description of the locality, extent and boundaries of the land by which it can be identified and surveyed; and the map referred to therein does not show the extent or the boundaries of the land; and the said grant is vague, indefinite, and void for uncertainty.

VI. That there is no evidence that the said alleged grant of Nicolas Gutierrez was ever approved by the territorial deputation or departamental assembly of California, or the supreme government
65 * of Mexico, and it is denied that it was ever approved by said deputation, or assembly, or said supreme government.

VII. That the said claimant shows no definitively valid grant or title for said land, and it is denied that he ever received a definitively valid grant or title for said land.

VIII. That there is no sufficient evidence that the said claimant ever received or solicited the juridical possession of the said land; that the document shown by the claimant, purporting to be a certificate of the juridical possession of the said land by Santiago Arguello to Pablo de la Portilla, agent of said claimant, dated August 1st, 1836, is not made according to the said alleged grant, and the map referred to therein, nor the ordinance or law.

That it does not show the locality, extent, or boundaries of the said land; that it is not signed by two assisting witnesses; that it is not upon stamped paper, and it is vague, indefinite and void, and the said land claimed as aforesaid never was lawfully segregated from the public lands of Mexico.

IX. That there is no evidence that the said Santiago Arguello was constitutional alcalde of the municipality of San Diego on the 1st of August, 1836, and that he had, at said date, lawful authority to give the juridical possession of said land; and it is denied that the said Arguello was constitutional alcalde of the said place at said date, and that he then had lawful authority to give the juridical possession of the said land to the said Pablo de la Portilla, the pretended agent of the said claimant.

66 X. That there is no evidence that the said claimant performed the conditions of the said alleged grant and the requirements of the law; and it is denied that he performed the conditions of the said alleged grant and the requirements of the law.

XI. That there is no evidence that the said claimant built a house upon the said land within one year from the date of the said alleged grant, and that it was inhabited; and that he cultivated the said land; and that he placed upon said land four hundred head of cattle and horses and sheep; and it is denied that he built a house upon the said land within one year from the date of the said alleged grant, and that it was inhabited; and that he cultivated the said land and placed upon it four hundred head of cattle, besides horses and sheep.

XII. That the said claimant fails to show, in his said petition to said board of commissioners, or in his said petition to this honorable court, the metes and bounds of the said land alleged to have been

granted and claimed, as aforesaid; and said petitions are vague and indefinite.

Wherefore, the premises considered, the said attorney, respondent in behalf of the United States, prays that the said claimant may be served with a copy of this answer, and that after due proceedings this honorable court will decide the said claim of said petitioner for said tract of land to be invalid, and to decree costs against him, and general relief.

P. ORD,

67 *Of Monterey county, attorney of the United States for the southern district of California.*

Filed March 3d, 1855.

C. E. CARR, *Cl'k.*

Motion to take testimony.

In the United States district court for the southern district of California.

THE UNITED STATES, appellee, *ads.* SILVESTRE DE LA PORTILLA, appellant. } Case No. 144. Claim for rancho of Valle de San José.

And now, on this —— day of ———, A. D. 1855, the parties appear in court, the appellee appearing by P. Ord, United States district attorney for the south'n dis't of Cal'a, and the appellant, by J. R. Scott, his att'y; and by consent of parties it is ordered that either party may take such further testimony as they shall wish in the above-named cause.

Filed April 9th, 1855.

C. E. CARR, *Cl'k.*

68 *Notice of hearing.*

In the district court of the United States for the southern district of California.

SILVESTRE DE LA PORTILLA, appellant, *vs.* THE UNITED STATES, appellees. } No. 144.—Transcript No. 469. Special September term, 1855. Los Angeles.

To Silvestre de la Portilla or his attorneys:

Please take notice that the above-entitled cause will be brought to a hearing by the appellee on Tuesday, the 2d of October, A. D. 1855, or as soon thereafter as the cause can be heard.

P. ORD,
Attorney of the United States.

Filed Sept. 26th, 1855.

C. E. CARR, *Cl'k,*
By JOHN W. ROSS, *Dep'ty.*

69

70 *Depo. of Santiago Arguello.*

SILVESTRE DE LA PORTILLA
vs.
THE UNITED STATES. } No. 144.—Valle de San José.

Deposition of Santiago Arguello, a witness on the part of the United States, taken before me, Charles E. Carr, U. S. commissioner for the southern district of California, on the 26th of September, A. D. 1855. Present: P. Ord, att'y for the United States; J. R. Scott, att'y for claimant. Wm. G. Dryden was sworn as interpreter.

Santiago Arguello, being sworn, to questions of counsel for the several parties answers as follows:

1st ques. What is your name, age, and place of residence?

Ans. My name is Santiago Arguello; my age is 63 years; my residence in Lower California, three miles beyond the line.

2d ques. Do you know Silvestre de la Portilla, the claimant in this case; if yea, when, where, and how long have you known him?

Ans. Yes, I know him; I knew him in San Diego, when he came there from Sonora, but can't remember the time; I think that he arrived in San Diego whilst Echandia was governor.

3d ques. How long did he remain in San Diego or neighborhood; and when did he go away?

Ans. He remained in San Diego from the time of his arrival there until the year 1836, when he left for Sonora.

4th ques. When did he return from Sonora?

Ans. In the years of 1851 or 1852.

5th ques. Do you know the rancho called Valle de San José?

71 If yea, how long have you known it, and where is it situated?

Ans. I know it; I have known it from the 1836; it is situated in the county of San Diego, between Santa Ysabel and Agua Caliente.

6th ques. Who has occupied the said rancho or any part thereof since you have known it? In what manner and to what extent has it been occupied, and under what kind of right or title has the same or any part thereof been claimed, possessed, or occupied, by the claimant in this case, or any other person or persons? and generally state all you know about the said rancho and its occupation, cultivation, or use, by the said claimant or any other person or persons.

(Question objected to by counsel for claimant.)

Ans. It has been occupied by Silvestre de la Portillo first; Joaquin Ortega second; and, thirdly, by Don Juan Warner. They occupied it with cattle and horses. Silvestre de la Portilla held it under a title from the government of Califarnia; Don Joaquin Ortega held it by purchase, which he made of the Valle de San José; and Don Juan Warner, who held it also under a title from the governor of California. I know that Don Silvestre de la Portilla occupied it a year, more or less, after possession was of said rancho. Portilla left the rancho for Sonora, on business, about the middle of the year 1836, leaving, as his attorney in fact (apoderado) his brother, Pablo de la Portilla. On account of the absence of Don Silvestre there were some claims

72 against him, in consequence of which his brother had to sell the rancho, which was bought by Joaquin Ortega. Joaquin Ortega held it by purchase for about three years; and Ortega gave it to the mission of San Diego, that the mission might give him the Cañada of the Vallena and the water source or spring of water called Santa Teresa. The Valle de San José, by this change, became the property of the mission of San Diego, which held it for about three years, when Don Juan Warner petitioned the governor for it, and the mission reported favorably, because as it was the property of the mission. I know that the mission was offered five hundred fanegas of wheat to give up its rights to Don Juan Warner, and under that representation of the mission to the government Don Juan Warner received a title from the governor. I know that after the concession from the government to Warner he held it with horses, cattle and a house, particularly upon that part called Buena Vista, which occupation has continued up to the present time.

7th ques. How do you know that Joaquin Ortega purchased the said rancho from the said attorney in fact (apoderado) of Silvestre de la Portella? and state whether the said sale was made; and generally all you know about the mode and manner of the sale.

Ans. I know, because I was alcalde and judge of 1st instance in San Diego at that time; and even before Portilla left various claims had been presented against him; and that even Silvestre himself indicated to the alcalde that he was owing debts in California; and that whilst Portilla was communicating this to him, that as he was

73 owing these debts in California he left his brother a full and complete power of attorney, and property to pay his debts with; and having so left him, he did actually go to Sonora. As Silvestre had been acting here as a merchant, I know that the creditors of Silvestre presented themselves to his brother who paid them with the proceeds from the sale of the rancho. I know that the ranch was sold in 1837; the sale was made before the authorities of San Diego, José Antonio Estudillo being alcalde at that time.

(Answer objected to by counsel for claimant.)

8th ques. Do you where the Aguar Calientes are? If yea, state its locality.

Ans. I do; It is on the border toward where the San José closes at the mountain.

Cross-examined by counsel for claimant.

Ques. State anything you know concerning juridical possession having been given to Portilla; if so, state when it was given and who gave it.

Ans. I was alcalde in 1836, in San Diego, and gave the judicial possession to Portilla of said ranch.

Ques. State the boundaries of the land of which you gave possession.

Ans. East, on the road that goes to Agua Caliente, a ravine was the line, the name of which I don't remember; on the west side the cañon where the valley closes, and I think a road that goes to

74 Pala; on the north a place called Los Alamos, also where the valley closes at the foot of the mountain; on the south side an oak before you arrive at the land occupied by the Indians of the Carrecita. I speak of these points as standing in the centre of the valley of San José.

Ques. Who was living upon the ranch at the time you gave juridical possession to Portilla?

Ans. Portilla himself.

Ques. How long had he been living there before the possession?

Ans. I dont know; but when I went there to give the possession I found a house and corral there already made.

Ques. State, at the time you gave juridical possession to Portilla, how much land had he in cultivation, how much stock he had on the land, and state all you know about its situation?

Ans. I saw wheat fields there, I can't tell how many acres: I saw cattle and horses, but don't know how many, but I saw corrals there capable of containing a large number.

Ques. State whether or not this ranch was occupied in the same manner by Portilla until he left, and by his brother after he had left, and how long?

Ans. It was Don Silvestre occupied in this manner until he left for Sonora, taking with him some horses; and after he left his brother continued to occupy it in the same manner.

Ques. What kind of a house did Portilla have on the rancho?

75 Ans. It was an adobe house, and other little buildings of poles.

Ques. At the time you gave juridical possession, state whether or not you measured the ranch?

Ans. I did.

Ques. State whether or not you delivered to Portilla the usual documents of admeasurement and possession?

Ans. I did.

Ques. State how much land was contained within the boundaries you measured?

Ans. I think four sitios; whatever the title calls for I measured.

Ques. State whether or not the house which you speak of as having been occupied by Juan Warner is within the boundaries of which you gave juridical possession to Portilla?

Ans. I do not know, for I did not see it; but I know that Portilla's land covered part of Buena Vista.

Ques. When you state that Silvestre said he had left his brother a power of attorney, did he state that this power was in writing or verbal?

Ans. Portilla made it verbally before me as alcalde.

Ques. Did you enter it of record at the time?

Ans. I do not remember.

Ques. Were you present at the time the sale was made by the brother of Silvestre to Ortega?

Ans. I was not.

76 Ques. State whether or not, when Portilla left for Sonora, it was

his intention of returning again to California; and if so, what was the reason that he did not sooner return?

Ans. It was his intention to return when he left. I think he took horses in order to sell them, and pay what he owed here in California; but I do not know why he did not return.

Ques. State whether or not copies of the papers giving judicial possession to Portilla were archived in the office of the alcalde at San Diego at the time of giving such possession.

Ans. I delivered them to Portilla, and think they were not archived; but upon reflection, think a copy must have been recorded, because the alcalde went to show the boundary line when Ortega purchased from the brother of Portilla.

Ques. State what has become of the archives of the year 1836 belonging to the alcalde's office in San Diego—whether they are still there, or lost, or destroyed.

Ans. I know that they were lost. I have searched for documents frequently and could not find them, the answer always being that they were lost.

Ques. When were you alcalde last in San Diego.

Ans. In the year 1836.

Re-examination resumed.

Ques. Do you know anything about judicial possession of this land having been given to Joaquin Ortega? If yea, state all you know about it.

(Objected to by counsel for claimant.)

77 Ans All I know is, that when Ortega bought, the alcalde went to show him the boundaries.

(All questions by claimant in relation to the boundaries objected to by U. S. att'y.)

Recross-examined.

Ques. Were the boundaries which you have here explained the same that were given in the espediente of the judicial possession given to Portilla.

(Objected to by U. S. att'y.)

Ans. They are, or ought to be the same.

S. AROUELLO.

Sworn to and subscribed before me this 26th day of September, A. D. 1855.

C. E. CARR, *U. S. Com'r.*

Filed September 26th, 1855.

C. E. CARR, *Cl'k.*

78 *Notice of hearing.*

In the district court of the United States for the southern district of California.

SILVESTRE DE LA PORTILLA
vs.
THE UNITED STATES. } No. 144.—Transcript No. 469.

To Silvestre de la Portilla or his attorneys:

Take notice that the above entitled cause will be brought to a hearing by the United States on Friday, the 19th day of October, A. D. 1855, or as soon thereafter as the case can be heard by the court.

Los Angeles, October 11th, 1855.

P. ORD, *U. S. Dist. Att'y.*

Filed October 11th, 1855.

C. E. CARR, *Cl'k.*

79

80 *Dep'n of Fran'co Ruiz.*

SILVESTRE DE LA PORTILLA, appl't,
vs.
THE UNITED STATES, app'ee. } No. 144.

Deposition of Francisco Ruiz, a witness on the part of appellant in the above entitled cause, taken Feb'y 11th, 1856, before Charles E. Carr, U. S. com'r for the south'n dist. of California.

Present: J. R. Scott, att'y for appl't; P. Ord, U. S. att'y for the United States; Wm. G. Dryden was sworn as interpreter.

Francisco Ruiz, being duly sworn, answers to questions propounded to him as follows:

Ques. What is your name, age, and place of residence?

Ans. My name is Francisco Ruiz; my age, between 47 and 48 years; my residence, Los Angeles.

Ques. Do you know Silvestre de la Portilla? If so, how long have you known him?

Ans. I know him; have known him since 1827 or 1828.

Ques. Do you know a place called Valle de San José? If so, how long have you known it, and where is it situated?

Ans. I know a place of that name; have known it since 1834 or 1835, and is situated in the county of San Diego.

Ques. Describe the place called Valle de San José, its situation and boundaries.

(Objected to by the U. S. att'y.)

81 Ans. I know the place well, but I was not there when the judicial possession was given.

Ques. State any well-known snd prominent points, if there are any, upon any side of the place called Valle de San José.

Ans. There are prominent points. I was there once in charge of the rancho, in the lifetime of the deceased, Don Pablo, brother of Silvestre de la Portilla; I was in charge then of all the property on

the ranch; one point I know, in going towards Santa Ysabel, and before you arrive at the carecito, there is one of the boundaries a green valley.

(Objected to by the U. S. att'y.)

Ques. On what side of the place called Valle de San José is this point?

On the south side, a well-known place, because it is the high road from this place, in a straight direction towards the rancheria called "Matajuai;" this is to the east of San José, on the road to San Felipe. From there, there is a valley called Buena Vista, where there has been some sowings; from this latter place, crossing some low hills below the warm springs, and where there was formerly a lake; this is also a well-known point, because it is below the warm springs and forms a lake; it is on the south side of the place called Valle de San José. From this place I know another point where there are some cotton trees on the bank of the river, which I think comes from the warm springs and runs into the ravine that goes to Pala; this is on the westerly side.

82 Ques. State the nature of the hills, if there be any, that surround the place called San José; whether they are high or low hills, and what they are called in the different places where they surround the place.

Ans. Within the ranch there are small hills, and around the same is a high mountain. On one side, towards Santa Ysabel, to the south of San José, the mountain is called Sierra de Santa Ysabel; around where the Agua Caliente is, the mountain is that of Agua Caliente. It is, I think, north of San José. On the side where you go into the ravine to Pala, the mountain is called the Mountain of Pala. It is west of San José. There are but four gaps to come out of the Valle de San José. There is another place east of San José, where the mountains are called the Mountains of San Felipe. It is where the road goes to San Felipe and Sonora.

Ques. How far is it from the Sierra de San Ysabel to the Sierra of Agua Caliente?

Ans. I think between seven and eight leagues.

Ques. What is the distance from the Sierra de Pala to the Sierra de San Felipe?

Ans. Between eight or nine leagues.

Ques. State any rancho that adjoins this place called San José on either side.

(Objected to by U. S. att'y.)

Ans. I know that the rancho of Agua Caliente, on the north, adjoins San José; and I also think that Santa Ysabel, on the south, adjoins it. I don't know of any other rancho but these two close to San José.

83 Ques. How far from and in what direction does this place called Valle de San José lie from the mission of San Luis Rey?

Ans. About fifteen leagues, and the direction a little north of east.

Ques. State anything you know of the occupation of the ranch of Valle de San José by Silvestre de la Portilla.

Ans. Silvestre de la Portilla occupied it with a great number of

stock; also land under cultivation. Upon one occasion, when I was there, I saw fifty fanegas of wheat sown, and I do not remember how much barley. He had a large adobe house on the place, and had three corrals. He had nine hundred head of cattle, which were placed in my charge. It was Don Pablo, the brother of Silvestre, that delivered it to me, whilst Don Silvestre went to Sonora. Whilst Don Pablo was in charge of the place, he was called to Monterey and placed me in charge. I was then many times on the place whilst Don Silvestre occupied it. I lived there with my family. I think Silvestre was living on the ranch between 1831 and 1833, or at least two years before he went to Sonora.

Ques. Are the points you have mentioned as surrounding the Valle de San José well-known points, and are they now known by the same names?

Ans. I think the points still retain the same names. They are all well known.

84 *Cross-examined by the U. S. att'y.*

Ques. How long did you live on the rancho after you had been employed by Don Pablo Portilla?

Ans. About one month, more or less, until Don Pablo returned from the north.

Ques. In what year was this?

Ans. I do not remember.

Ques. Did you ever live there after this time?

Ans. I never did after that.

Ques. From what source did you obtain your information about the places, localities, and boundaries you have before spoken of and described?

Ans. From the deceased Don Pablo, who designated these places to me as the places and boundaries of the rancho. I never had any other source of information but that I have already stated.

Ques. Do you or not know at what time Silvestre de la Portilla returned from Sonora?

Ans. He returned in the year of the discovery of the placeres in California.

Ques. Do you know how long Pablo Portilla lived on the rancho after his return from Monterey?

Ans. I don't know.

Ques. When were you last on this ranch?

Ans. The last time I was there was when Don Pablo went to Monterey, and I was left in charge of the rancho.

Ques. Do you know who now lives on the ranch?

Ans. I do not know.

85 *Examination in chief resumed.*

Ques. State whether or not the different points you have named as surrounding the place called San José were not well known by the

names you have given them, and called by those names generally by the community.

Ans. They were by all those acquainted with the Valley of San José.

Recross-ex. by U. S. dist. att'y.

Ques. In what year was it that Don Pablo went to Monterey?

Ans. I don't remember. Either Chico or Figueroa was governor of California at that time.

FRANC'O RUIZ.

Sworn to and subscribed this 11th day of Feb'y, 1856, before me.
C. E. CARR, *Cl'k.*

Filed Feb'y 11th, 1856.

C. E. CARR, *Cl'k.*

86 *Affidavit of W. C. Ferrell.*

In the United States district court, southern district of California.

SILVESTRE DE LA PORTILLO, appellant,
vs.
THE UNITED STATES, appellee.
} Case 144.—Valle de San José.

STATE OF CALIFORNIA,
Los Angelos county, ss:

William C. Ferrell, being duly sworn, deposeth and saith that he is a resident and practicing lawyer in the city and county of San Diego, California, and has so been for most of the time for almost six years last past; and that during all that time he has been familiar with all the record books and papers of the county and district clerks' and recorders' offices of San Diego county; and that none of the Spanish archives relating to proceedings had in California, pertaining to real estate, from the year 1835 to the year 1846, exist in said office, according to the best knowledge and belief of affiant, as affiant says that he has frequently made search and enquiries for such documents, but could never find any, and has always been informed that they were lost.

W. C. FERRELL.

Sworn to and subscribed before me this 12th day of Feb., 1856.
C. E. CARR, *Cl'k.*

Filed Feb'y 12th, 1856.

87 C. E. CARR, *Cl'k.*

88 *Affidavit of R. C. Hopkins.*

U. S. SURV. GENL'S OFFICE,
San Francisco, California, January 30th, 1855.

R. C. Hopkins, being duly sworn, deposes and says that he is a clerk in the office of the surveyor general of the United States for the

State of California; that his particular location is the department of the "archives" of said office; that, in accordance with the request of J. R. Scott, he has examined the papers on file in said archives relative to the grant of a certain piece of land called "Valle de San José" to Silvestre de la Portilla, petitioned for by said Portilla on the 20th day of February, 1834, and that after diligent search he has been unable to find, among said papers, any evidence of judicial possession having ever been given to the said Silvestre de la Portilla, of the place called "Valle de San José."

R. C. HOPKINS.

Sworn to before me this 30th day of Jan'y, A. D. 1856.
JAMES A. MUNROE,
U. S. Commissioner.

Filed Feb'y 12th, 1856.

C. E. CARR, *Cl'k.*

89

90 *Affidavit of claimant.*

In the dist. court of the United States for the southern district o California.

SILVESTRE DE LA PORTILLA, appl't,
vs.
THE UNITED STATES, appellee.
} Case No. 144.—Valle de San José.

STATE OF CALIFORNIA,
County of Los Angeles, ss:

Silvestre de la Portilla, being duly sworn, says that the papers pertaining to the judicial possession of the rancho called the Valle de San José are lost, and that after diligent search he is unable to find the same; that said papers were left in the posession of his brother, Pablo de la Portilla, when affiant left California for Sonora, about the year 1836; that his said brother died somewhere in the upper part of the State about the year 1854; that affiant received of his said brother the title papers to said rancho when he returned to California from Sonora, about the year 1849, and that his brother then informed him that those were all the papers pertaining to said rancho then in his possession; and affiant has never heard of or had any knowledge of said papers since; that he has made diligent search for said documents relating to judicial possession, and verily believes that they are lost, so that he cannot produce them here in court.

his
SILVESTRE DE LA + PORTILLA.
mark.

Sworn to and subscribed before me this 9th day of Feb'y, 1856.
C. E. CARR, *Cl'k,*
By O. MORGAN, *Dept'y.*

Filed Feb'y 12, 1856.

C. E. CARR, *Cl'k.*

91

Deposition of Pio Pico, taken before C. Sims, United States commissioner for the district of California, at the United States courthouse in the city of Los Angeles, on Friday, the 19th day of December, A. D. 1856, at 3 o'clock, p. m. by consent and agreement of parties, to be used as testimony in behalf of the United States, in a certain cause now pending in the U. S. district court for the southern district of California, being case No. 144 on docket of said court, wherein Silvestre de la Portilla is appellant and claimant, and the United States appellee.

Present: Volney E. Howard, for Pacificus Ord, U. S. attorney, and J. R. Scott, esq., attorney on behalf of the claimant and appellant.

Pio Pico, being duly sworn, says:

Ques. Are you acquainted with Don Silvestre Portilla?

Ans. I do.

Ques. How long have and where did you know him?

Ans. I do not recollect the year, but I have known him ever since he arrived in the country; I have known him in San Diego, here, and in Sonora, in the years 1846 and 1847; I think he moved to Sonora in the year A. D. 1836, and returned in 1848.

Ques. Do you know a tract of land called San José del Valle? And if yea, state what you know as to what persons have occupied it.

Ans. I do; I know it occupied with horses and cattle, branded with a brand that he knew was the brand of Don Pablo de la Portilla, the brother of Silvestre Portillo, in the year 1835; afterwards I saw it occupied with cattle and horses having the same brand, but belonging to José Joaquin Ortega; and afterwards I understood that it was occupied by J. J. Warner. It was occupied by José Joaquin Ortega in 1837 or '38; I do not remember what time J. J. Warner occupied it.

93

Ques. Where was Silvestre residing when you saw him in Sonora?

Ans. I do not know; I saw him in Wymas, having come from some other place; he had his residence in the department of Sonora.

Quest. Do you know anything about Silvestre Portilla claiming this land at the time you saw him in Sonora?

(Objected to by J. R. Scott, att'y for appellant)

Ans. I do not.

Quest. State any conversation that you had with him at that time in relation to his claim to the land referred to?

(Objected to by J. R. Scott.)

Ans. He had a conversation with me, in which I asked him the question why he had not returned to California. He replied that there had occurred to him events very unfortunate; that in consequence of these unfortunate events, and the sale of the rancho by his brother to Don José Ortega, for which he had no motive to return to California.

Quest. Where, to your knowledge, after the return of Sylvestre Portilla, did he first set up any claim to the ranch of San José del Valle?

94 (Objected to by J. R. Scott.)

Ans. I heard that he was claiming it, but do not recollect when; it appears to me that it might have been in the years 1853 or 1854.

PIO PICO.

Sworn and subscribed to before me this 19th day of December, A. D. 1854.

C. SIMS,
Commissioner U. S.

STATE OF CALIFORNIA,
County of Los Angeles:

I, C. Sims, United States commissioner for the district of California, do hereby certify that the foregoing deposition of Pio Pico was taken before me, in accordance with the request and agreement of said attorneys, at the United States court-house in the city of Los Angeles, State of California. That the said Pio Pico was by me duly sworn according to law as a witness in said cause, in the caption of this deposition mentioned, and after being so sworn, his testimony was by me reduced to writing in his presence and that of the said attornies, and after having been by me carefully read to him and by him corrected as he desired, was by him signed in my presence.

In witness whereof, I have hereunto set my hand and seal (there being no official seal,) this 19th day of Dec'r, 1856.

[SEAL.]

C. SIMS,
U. S. Commissioner.

95 Filed this 24th day of December, A. D. 1856.

C. SIMS, *Clerk.*

96 *Translation of espediente.*

TO THE VERY REVEREND FATHER VICENTE OLIVA: For the purpose of soliciting the property in that tract of land (en propiedad el parage) known by the name of Valley of San José, previously occupied by the mission under your care, I request that you will please state if, at this time, the mission of San José has in occupation said land; and if not, from what time has the same been abandoned?

San Diego, August 5th, 1854.

JUAN J. WARNER.

The Valley of San José may be given to the applicant who solicits it, as the mission of San Diego, to which it belongs, hath not sufficient property (bienes) with which to cultivate and cover it (cubrirlo,) and it is not much needed for the mission.

San Diego Mission, August 5th, 1844.

FATHER VICENTE P. OLIVA.

To the first judge (juez primero) of San Diego:

For the purpose of soliciting the property in (en propiedad) that tract of land, "*parage*," known by the name of Valley of San José, previously occupied by the mission of San Diego, I request that you will inform touching the following subjects: If, at the present time, it is in an abandoned state, the time which it has been so abandoned; if it has been so abandoned because of the many thefts committed by the wild Indians; if, at this date, the mission of San Diego has the means to cover the same (cubrirlo;) the distance from the mission of San Diego to the said lands (parage). You will be pleased to
97 receive this on common paper in fault of the required.

San Diego, August 5, 1844.

J. J. WARNER.

In view of the information asked of this court by the applicant, we find at this present time the said San José del Valle vacant, "*baldio*," and that for two years, more or less, abandoned, without interests, "*bienes*," of any kind; neither is it occupied by cultivating grain fields by the mission of San Diego; but said tract (parage) at the present date belongs to said mission, and at the request of the applicant in San Diego, August 6, 1844. Juan Maria Marron, first court, (jusgado 1°) of the port of San Diego.

To his Excellency: Juan José Warner, a resident of and married in this department with Anita Gale, head of a family, before you in the brodest manner according to rights, before you and say that since the year 1833 I have been a resident of the City of the Angels, father of children born in this department; that being in need of a tract of land (un parage) on which to place a considerable number of neat cattle (ganado mayor y menor) belonging to the children of your petitioner by his said wife, I request you to have the goodness to grant (conceder) to my said children, as their property, the tract of land (parage) known by the name of Valley of San José, which is found to be vacant (valdio); situated to the east of the town of
98 San Diego, and distant from said town about twenty leagues; surrounded by the mountains, with an entrance at the east from San Felipe; at the north, from Teneceula; at the west, from Pala, and at the south from Santa Ysabel. Obliging myself to make an exact map (diseño) of said tract of land (parage) for the use of the executive and legislature. And I anticipate that there will be no inconvenience in granting the same (concederlo) and issuing the corresponding title, if your excellency should consider my children to the gift which I solicit. For the which, with due submission, request that you consider it advisable to decree favorably, for which I shall remain a debtor, protesting that I have not taken this step with malice, &c.

Monterey, August 30th, 1844.

JUAN JOSÉ WARNER.

Monterey, *August 30th.* 1844.

The secretary of state will give information after having taken all that he may deem necessary.

MICHELT'A.

To THE GOVERNOR: It appears that the land applied for may be granted (se conceda) without injury, as shown from information given by R. F. F. (reverend father friar) Vicente Oliva and the judge of San Diego, Mr. Juan Marron. The applicant is naturalized, and is a person of good habits; for which, if your excellency should not
99 otherwise determine, you might accede to his request.
Monterey, Sept. 2, 1844.

MANUEL JIMENO.

Fecha ut supra. Let the title be made out expressing that he is obliged to deliver the map (diseño) within four months from this date, which not being performed and noted on the same title, if the time should transpire, the title will be null and void. Signing this document (espediente) with this knowledge and understanding.

MICHELT'A.

Complying with the foregoing superior decree, I affix my signature, same date and place.

JUAN J. WARNER.

The applicant having complied with the superior decree, he remains obliged to deliver the map (diseño) within the time specified. In the meantime the applicant may occupy the land, and he will deliver, from the person in charge of the mission of San Luis Rey, a document, in which shall appear the valuation of the improvements, which shall be paid as shall be provided for by the executive.
Monterey, Sept. 6, 1844.

MAN'L JIMENO.

MONTEREY, *Nov.* 27, 1844.

In view of the petition with which this document (espediente) commences the information which precedes, I declare Don Juan Warner owner of the lands applied for by him.

100 Citizen Manuel Micheltorena, brigadier general of the Mexican army, adjutant of the general staff, and inspector of the Californias:

Whereas Don Juan José Warner, a naturalized Mexican, has made application, for his personal benefit and that of his family, for the land known by the name of Valle de San José, bounded on the east with the entrance from San Felipe and the mountain; on the west by the mountain and the ravine (cañada) of Ahuango, and the mountain on the north; the limits on the south being the carrisal and the mountains. The iniatory steps and proceedings prescribed by law and the regulations having been complied with, which I am invested to grant to him in the name of the Mexican nation (concerderle) the described land, declaring by this title (las presentas letras) the property to be his, subject to the approval of the legislature of the department, and with the following conditions:

1st. He shall not sell, dispose, hypothecate, impose tribute or encumbrance, nor donate it.

2nd. He may enclose the same, but not to the prejudice of roads

and servitudes. He shall enjoy the free and exclusive use of the same, using it for the purpose or cultivation which was most agreeable to him; but within one year he shall construct a house, and it shall be inhabited.

3d. By virtue of this title (despacho) he will request the proper officer to give him juridical possession, and by it the lines shall be established; at the terminations of which, besides the monu-
101 ments, he shall place some fruit or forest of service.

4th. The land of which donation is made is of the extent of six square leagues, (sitios de ganado mayor,) a little more or less, agreeable to the description by the respective map (diseño.) The officer who may give possession will cause it to be measured in conformity to ordinance, the remainder which may result continuing with the government (nacion) for its convenience.

5th. If he should fail (contraveniere) in these conditions, he will lose his right to the land, and it will be subject to denouncement (denunciable) by another person. In consequence, I order that this serving him for a title be held firm and valid, and that notice of it be taken in the respective book; and that it be delivered to the person in interest (interesado) for his security and other purposes.

Given in Monterey, November twenty-eighth, 1844.

MANUEL MICHELTORENA.
MAN'L JIMENO, *Secretary.*

Note is made of this grant (concesion) on folio twelfth, and onward in the respective book.

JIMENO.

To his Excellency the Governor: Juan J. Warner, native of the U. S. of America, naturalized and resident in this department, in the broadest manner consistent with right, appear before you and say that by virtue of a title made by the executive, granting to me
102 (concediendome) in property the Valley of San José, with the approval of the legislature, I transmit herewith the title, map, and authorized copy of the document, (espediente,) that you may please submit it to the assembly to be approved, in case they find no obstacle, observing that it has not been possible to present the document of valuation of the improvements belonging to the mission of San Luis Rey from the person in charge of said mission; and if the government should not provide a better mode, that an appraiser be appointed by the government, and one by each of the interested parties, to make the valuation.

I make the necessary protests, &c. Your excellency will receive this on common paper for want of the requisite.

Angeles, May 12, 1845.

J. J. WARNER.

Angeles, *May* 14, 1845.

Having taken into consideration this and the documents with which the applicant has accompanied it, let it pass to the committee on vacant lands (terrenos valdios.)

PIO PICO, *President.*
AGUSTIN OLVERA, *Secretary.*

SIR: The committee on vacant lands having examined with all possibly probuty the document (espediente) made in consequence of the petition of Mr. Juan J. Warner, on the 30th of August of the year last past, touching the tract of land (parage) known by the name of Valley of San José, which was granted to him (le fue
103 concedido) by a title legally executed by the executive of the department, on the 28th of November of the last year, as cited, and resulting from examination that the said grant (concesion) in favor of Mr. Juan J. Warner was made in full and perfect (total) accordance with the requirements of the laws upon the subject, and that it only remains that the grantee complies with the provision made by the executive, extending the title to present from the person in charge of the mission of San Luis Rey a document of the improvement existing on said tract of land (parage,) which amount he shall pay as might be provided for by the same executive.

Your committee, therefore, present for the consideration of the assembly the following resolution: The grant (concesion) made in favor of Mr. Juan J. Warner of the tract of land (parage) named Valle de San José, adjudicated in property by the executive of this department, by title legally made out on the 28th of November last, in conformity with the provisions of the law of August 18th, 1824, and article 5th of the regulations of Nov. 21st, 1828, is approved. The governor being pleased to take those steps which he believes may conduce to the verification of the valuation of the property existing on said tract of land, as well as to the payment of the amount.

Chamber of sessions in the city of Los Angeles, May 17th, 1845.

YGNACIO DEL VALLE.
NARCISSO BOTELLO.

ANGELES, *May 21st*, 1845.

In the session of this day the resolution in the preceeding report was concurred in (aprovo,) ordering that the document (espediente) be returned to the government for that purpose (fines consiguientes.)

PIO PICO, *Presidente.*
AUGUSTIN OLIVERA, *Secretary.*

Filed in office Dec'r 6th, 1853.

GEO. FISHER, *Sec'y.*

104 *Decree.*

J. J. WARNER
vs.
THE UNITED STATES.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the said petitioner is valid, and it is therefore decreed that the same be confirmed. The land of which confirmation is hereby made, is situated in San Diego county and known by the name of the Valle de San José, and is described and bounded as follows, to wit: Bounded on the east with the entrance

from the San Felipe and the mountain, and the ravine (cañada) of Ahuanga, on the north by the mountains, and on the south by the carrisal and the mountains, reference for more particular description to be had to the grant made to said Warner and the map therein referred to, which are on file in this case. The lands hereby con-
105 firmed are intended to be confined to the valley, and do not extend beyond the foot of the mountains referred to in the above description, and containing six square leagues of land, a little more or less.

ALPHEUS FELCH,
R. AUG. THOMPSON,
S. B. FARWELL,
Commissioners.

Filed in office Oct'r 10th, 1854.

GEO. FISHER, *Sec'y.*

In the United States district court for the southern district of California.

J. J. WARNER, appellee, *ads.* THE UNITED STATES, appellant. } Case No. 218.—San José del Valle.

This cause coming on to be heard, on appeal from the final decision of the United States board of land commissioners to ascertain and settle the private land claims in the State of California, under an act of Congress approved March 3d, 1851, on the transcript of the proceedings and decision of said board, and of the papers and evidence upon which said decision was founded; and it appearing to the court that the said transcript and notice of appeal have been duly
106 filed according to law, and counsel for the respective parties having been heard, it is ordered, adjudged, and decreed that the said decision of the said commissioners be affirmed. And it is further adjudged and decreed that the claim of the above-named appellee to the land described in the grant is a good and valid claim; and it is ordered, adjudged, and decreed that the same be, and is hereby, confirmed. The land of which confirmation is hereby made is situated in the county of San Diego, and known as the Valley of San José, and is described and bounded in the original grant and map to which it refers, copies of which grant and map are on file with the papers in this case as follows, to wit: On the east by the entrance from San Felipe and the mountains; on the west by the mountains and defile of Ahuanga; on the north by the mountains, the southern limits being the carrisal and mountains, to the extent of six square leagues, provided said quantity of six square leagues be contained within the boundaries; but if there be a less quantity than six square leagues, then the claim of appellee to such less quantity is hereby confirmed.

ISAAC S. K. OGIER,
U. S. Dist. Judge.

Filed Feb'y 13th, 1856.

C. E. CARR, *C'lk.*

107 I, C. Sims, clerk of the United States district court for the southern district of California, do hereby certify that the foregoing, from page one to line ten on page twelve, all inclusive, is a true, correct, and full copy of original documents, transcribed from pages 31 to 36, inclusive, of transcript No. 218, from the United States board of land commissioners to ascertain and settle the private land claims in the State of California, in the case wherein the United States are appellants *vs.* J. J. Warner, appellee, now on file in my office; and that from line eleven, page twelve, onward, is a true and correct copy of the original decree of this court, in the above-mentioned case, now on file in my office.

In witness whereof, I have hereunto set my hand and affixed the seal of said court this 21st day of December, 1856.

[SEAL.]

C. SIMS, *Clerk.*

Filed this 24th day of December, A. D. 1856.

C. SIMS, *Cl'k.*

108 13—S. D. K.

Señor Prefecto del Segundo Distrito:

José Joaquin Ortega Méjicano por nacimiento y vecino de esta municipalidad como mas haya lugar en derecho ante V. S. hace presente que teniendo en numero de ganado vacuño y caballas la paz de poderlo fomentar pa. el sosten de su crecida familia y no teniendo unsitio en donde ponerlo pede el de Pamo llano perteneciente a la mission de San Diego y distante de ella como 9 leguas, el que se halla valdio como siempre lo ha estado, dicho sitio es temporal y no de regadio como se verá en el deseño ql. acompaño el que consta de cuatro sitios de ganado mayor. Por tanto A. V. S. suplico se sirva admitir esta en papel comun por falta del sellado corresponden este lugar, protestando de no ser de malicia y lo nocesario.

Puerto de San Diego, Junio 18 de 1842.

JOSÉ JOAQ'N ORTEGA.

PREFECTURA DEL SEGUNDA,
Distriti, San Juan, Julio 5, 1842.

De conformidad con las leyes y reglamentos de la materia informe el juez de paz de San Diego si el parage del llano de Pamo corres ponde á alguna corporacion, comundado particular, si está valdio, si el pretendiente tiene bienes pr. cubrirlo y demas requisitos pa. ser atendidos, si esta comprendido en las 10 leguas litorales ó 20 limitrofes con todo lo demas que le paresca conveniente á ilustrar la
109 materia y evacuado este informe pase el espediente al S. Ministro de la mision de San Diego para que produzca—[14—S. D. K.]—el suya en cuanto á aguella commundia, y vuelve el espediente a esta prefectura pr. los usos ql. selstemen conven'te.

ARGUELLO.

El llano de Pamo pertenece á esta mision de San Diego es verdad que en la actualidad esta valdio, pero algun dia se cubrirá y para yo

no gravar mi conciencia advieste dos puntos. 1á. Que no se entre el interesado ni una vara á la cañada de la Ballona, para el rumbo de Sta. Ysabel. 2°. Punto que el interesado cede el sitio que actualmente ocupa llamado á San José a benificio de la mision, con esta, dos condiciones se le puede conceder, y si no conviene en ellas el interesado yo tan puedo ceder á que le concede; es cuanto puedo informar y decir.

Mision de San Diego, Julio 7 de 1842.

F. VICENTE PASQUAL OLIVA.

15—S. D. K.

SAN DIEGO, *Ag't* 7 *de* 1842.

En cuanto el parage del llano de Pamo es un parage valdio que nunca se ha ocupado ni cuando tiena bienes la mision de San Diego que es a donde perteneced'ho parage. El solicitante tiene bienes con que cubrirlo, el mencionado parage desta de la diha mision como doce eguas, es cuanto puedo informar.

J. ANT'O GONGORA.

110 EX'MO S'OR: Mandados practicas los informes de estilo á consequencia de la solicitud del terreno de San Diego Dn. Joaquin Ortega, del llano de Pamo se advierte que el P. Ministro de quella mision [16, S. D. K] informe que pertenece a ella aquel parage y demas condiciones q. asienta, esta prefectura no puede concebir que derecho pueda esta mision tener a un parage distante como doce leguas y que aun en tiempo qne la mission tenia bienes no lo ocupaba, amas que le queda desde la Ballena hasta Sta. Ysabel el espacio de ocho leguas y podrá ocupar como dice algundia.

El Valle de San José q. actualmente ocupa el interesado dista de la mision viente, y dos leguas, y no sep'r q. si considera una mision sus ningunos bienes estenderse atanto terreno solo pr. ql. crusa el camino pa. Sta Ysabel pa. este llano de Pamo, y como a tres leguas de distancia con el norte de Sta Ysabel queda el Valle de San José.

Hago este puña de aquellos sitios pa. conocimiento de V. E. pr. el que de ellos tengo, y con el fin de que como el interesado es mi hermano politico V. E. en vista de este informe y el del juez de paz de San Diego se servárá resolver lo que fue se de su superior agrado.

Angeles, Ags'to 12 de 1842.

S. ARGUELLO.

111 EX'MO S'OR: José Joaquin Ortega Vecino de San Diego en este departmento ante la justificacion de V. E. haga presente que el espediente á que me refere en mi instancia de 18 del corriente le he conseguido y lo a compaño a V. E. pr. q. un puesto de todo lo que en el se ha practicado se servira V. E. ver que no hay inconveniente alguno pa. qe. se mi espéda el titulo del terreno nombrado Pamo, gracia que espero recibir de la bondad de V. E. qurando no ser de malicia y lo necesario, etc.

Monterey, No'bre 23 de 1843.

JOSÉ JOAQ'N ORTEGA.

MONTEREY, *Nov.* 22 *de* 1843.

En virtud a lo ql. alega nuevamente el interesado, informe en vista de todo el S. S'rio del despacho sabre las condiciones modo y circumstancias con que pueda ó no accederse.

MICHELT'A.

EX'MO SO'R GOB'OR: Por todo lo practicado en este esped'te resulta que el terreno de Pamo esta valdio y se le puede conceder á Don José Joaquin Ortega pero bajo las condiciones de no pasar de el cañada de la Ballona y que el parage qu. ocupaba nombrado San José lo dije á benificio de la mision de San Diego como asi lo pide el R. P. Ministro Oliva. Mas V. E. dispondra sabre el particular otra providencia que le pareciese convinente.

Monterey, 22 de N'bre de 1843.

MAN'L JIMENO.

112 MONTEREY, *Abre* 22 *de* 1843.

Espedan el titulo con las condiciones ql. pide el Padre Ministro y opina el S. S'rio devolvendo se dicho terreno q. posee ycede á la mision espresandolo en el por escrito y firmado.

MICHELT'A.

4.—S. D. K.

Cumpliendo con lo dispuesto por el s'or gob'or hago presente q. a pesar de no tener en mi poder ningun document por el que se me halla concedido el terreno de San José pero por el derecho que tengo á el tanto por la cesion que hizo á mi favor Don Pablo de la Portillo como por el tiempo de seis años que ocupo d'ho terreno haga por la presente una espresa manifestacion de ceder a favor de la mision de San Diego ó del gobierno el derecho ql. tengo en el terreno mencionado sin tener en lo sucesivo derecho á el en razon de haber seme dado pontal motivo el parage de Pamo. Y pa. la debida constancia estiendo la presencia en Monterey a 23 de Nov'bre de 1843.

JOSÉ JOAQ'N ORTEGA.

Otro si. El terreno de Pamo que pretendes es en Union de Dn. Eduardo estoc y suplico al gob'or q. asi se entiendo en mi petition pr. qr. al estenderse el titulo ser á favor de los dos.

Monterey, No'bre 23 de 1843.

JOSÉ JOAQ'N ORTEGA.

113 S'OR PREFECT OF THE SECOND DISTRICT: José Joaquin Ortega, Mexican by birth and resident of this town, in the most appropriate and legal form appears before you and represents that having a number of cattle and horses sufficient for breeding for the support of his large family, and having no place on which to place them, solicits the plain of Pamo, belonging to the mission of San Diego, and distant from it about 9 leagues. It is found vacant, as it ever has been; said tract of land is not irrigable, as can be seen by the accompanying map; it contains four square leagues. Wherefore I solicit that

y. excellency will be pleased to receive this on unsealed paper, as there is none of the proper stamp; protesting that it is not from malice, but that is requisite.

Port of San Diego, June 18, 1842.

JOSÉ JOAAQ'N ORTEGA.

OFFICE OF THE PREFECT OF THE SECOND DISTRICT,
San Juan, July 5, 1842.

In accordance with the laws and regulations on the subject, the justice of the peace of San Diego will report if the land of the plains of Pamo appertain to any one. or to any corporation or community; if it is vacant, if the petitioner has property with which to occupy it, and all other requisites, that he may be attended to if it is within the 10 littoral or 20 ———, with whatever more he may consider important to elucidate the subject; which report being affixed he will transmit these documents to the minister of the mission of San Diego; that he make [14, S. D. K.] his report respecting that community, and return these documents to this office for their respective use.

114

ARGUELLO.

The plain of Pamo belongs to this mission of San Diego. It is true that at this present time it is vacant, but on some day it may be occupied, and not to afflict my conscience I advert to two points: 1st, that the applicant shall not enter into the Valle of the Ballena, in the direction of Santa Ysabel, one yard; 2d point, that the applicant transfers the tract of land that he now occupies, called San José, to the mission for its benefit. Upon these two conditions the grant may be made, and if the applicant does not comply with them, neither can I accede that it should be granted to him. This is all that I can report and say.

Mission of San Diego, July 7, 1842.

F. VICENTE PASQUAL OLIVA.

SAN DIEGO, *August* 7, 1842.

Respecting the tract of land, plain of Pamo, it is a vacant tract which has never been occupied, not even when the mission of San Diego, where it belongs, had property with which to occupy it. The applicant has property with which to occupy it. The said tract is twelve leagues, or thereabouts, from the mission. This is all that I can report.

115

J. ANTO. GONGORA.

EXMO. SOR.: Ordered to procure the legal reports concerning the plain of Pamo in consequence of the petition of the resident of San Diego, Don Joaquin Ortega. It is to be observed that the F. minister of that mission [16, S. D. K.] reports that the tract belongs to it, and other conditions which he affixes. This prefecture cannot conceive what right this mission can have in a tract twelve leagues distant, or thereabouts, and which, even in times when the mission had property, it did not occupy. Moreover, from the Ballona to Santa

Ysabel a distance of eight leagues remains to it, which it can occupy, as said, some day. The valley of San José, now occupied by the petitioner, is distant from the mission twenty-two leagues, and I do not know how it can be considered that a mission without any property should extend itself over so much land simply because the road to Santa Ysabel crosses this plain of Pamo, and that about three leagues to the north of Santa Ysabel is the valley of San José. I make these reflections concerning these tracts of land, for the information of your excellency, from what I know, and for the pur-
116 pose, as the affiant is my brother-in-law. Your excellency in view of this report, and that of the justice of the peace of San Diego, you may be pleased to act as shall be in conformity to your superior disposition.

Angeles, Ag'te 12, 1842.

S. ARGUELLO.

EXMO. SOR.: José Joaquin Ortega, resident of San Diego, in this department, before the wisdom of your excellency represents that the documents to which I referred in my communication of the 18th inst. I have obtained, and remit them to you for the purpose that, informed of all that in them has been done, your excellency may be pleased to see that there is no obstacle why the title for the land named Pamo should not be issued to me, favor which I expect to receive from the kindness of your excellency, protesting that which is required, and that it is not from malice.

Monterey, No'bre 23, 1843.

JOSÉ JOAQ'N ORTEGA.

MONTEREY, *Nov.* 22, 1843.

In virtue of what the petitioner newly alleges, the secretary of affairs will report, taking under consideration the whole subject, upon the conditions, form, and circumstances with which he may be able or not to assent.

MICHELT'A.

EXCELLENT SIR GOVERNOR: From all that has been done
117 agreeable to these documents, it appears that the land of Pamo is vacant, and that it may be granted to D. José Joaquin Ortega, but under the conditions not to pass the cañada of the Ballena, and that the tract that he occupied called San José he quits for the benefit of the mission of San Diego, as asked by the R. F. Minister Oliva. However, your excellency can make any other disposition of the matter which you may conceive proper.

Monterey, Nov. 22d, 1843.

MAN'L JIMENO.

MONTEREY, *Nov.* 22, 1843.

Issue the title with the conditions asked by the father minister and indicated by the secretary, returning the said land of which he is in possession and ceding to the mission, stating it in writing and signed Michel'ta, [4, S. D. K.]

Complying with the orders of his excellency the governor, I declare that although I have not in my power any document by which it may appear that the lands of San José have been ceeded to me, but by the right which I have to it, as much by the transfer and cession (sale) which D. Pablo de la Portilla made to me as for the period of six years which I have occupied said land, I make by these presents an express manifestation to cede in favor of the mission of San
118 Diego, or of the government, the right which I have in the before-mentioned lands, without having in the future any right to it, for the reason that there has been given to me for these considerations the tract of Pamo, and for the faithful observance this is made in Monterey, Nov. 23, 1843.

JOSÉ JOAQ'N ORTEGA.

Another clause: The land of Pamo which I am solicitous for is for myself and D. Eduardo Estoc, and I request that the executive will so understand my petition, that when the title is issued it may be for both of us.

Monterey, Nov. 23, 1843.

JOSÉ JOAQ'N ORTEGA.

I, C. Sims, clerk of the United States district court for the southern district of California, do hereby certify that the foregoing, from page one to the twenty-first line on page sixth, all inclusive, is a true, correct, and full copy of original documents, transcribed from pages twelve and thirteen, and from pages eighteen, nineteen, and to the eighteenth line on page twenty (in the Spanish language) of transcript No. 195 of this court, from the United States board of commissioners to ascertain and settle the private land claims in the State of California, in the case wherein José Joaquin Ortega *et al.*
119 are appellants, *vs.* The United States, appellees, now on file in my office; and that from line twenty-two, page six, onward is a true and correct translation from Spanish into English, of the aforesaid document.

[SEAL.] In witness whereof, I have hereunto set my hand and affixed the seal of said, this 23d day of December, 1856.

C. SIMS, *Cl'k*,
Pr. JAMES H. COLEMAN, *Dep'ty.*

Filed this 24th day of December, A. D. 1856.

C. SIMS, *Cl'k.*

E.—Agreement.

120 The Reverend Father Friar Vincent Oliva, as apostolical minister of the mission of San Diego, and the citizen Joaquin Ortega, of the port of the same name, and proprietor of the rancho of San José, have reciprocally agreed before the present witnesses, who also sign this document, as follows:

The Rev'd Father Friar Vincent cedes in favor of Sr. Ortega four

square leagues comprised between the Aguagétos entrance of the plain of Pamo to the hill of the Salvira, drawing from this point a straight line to the rancheria of Camajal, leaving free the whole of the cañada of the Belleues for the benefit of the mission; and the above-named Ortega, in retribution, cedes to the above-named mission of San Diego the valley of San José, to put the same to the use most convenient to said mission; and in testimony whereof, and for the purpose of giving to this document due force, the contracting parties and witnesses sign the same in San Diego, the twentieth day of May, one thousand eight hundred and forty-three.

JOSÉ JOAQUIN ORTEGA.
F. VINCENTE PASQUAL OLIVA.

Comotestigo:

JULIO OSUNA.
JUAN M'A MARRON.

Filed in office Sept. 10th, 1852.

GEO. FISHER, *Sec'y.*

STATE OF CALIFORNIA,
County of Los Angeles, ss:

121 I, C. Sims, clerk of the United States district court for the southern district of California, hereby certify the foregoing to be a full, true, and correct copy of an "agreement marked E," in the transcript No. 195, on docket of said court, and on file in my office.

[SEAL.] In witness whereof, I hereunto set my hand and affix the seal of said court, this 18th day of December, A. D. 1856.

C. SIMS, *Cl'k,*
Pr. JAMES H. COLEMAN.

122 *Decree.*

In the United States district court for the southern district of California.

SILVESTRE DE LA PORTILLA, appellant,
vs.
THE UNITED STATES, appellee.
} Case 144.—Valle de San José. Transcript 469.

This cause coming on to be heard on appeal from the final decision of the United States board of land commissioners to ascertain and settle the private land claims in the State of California, under an act of Congress approved March 3d, 1851, upon a transcript of the proceedings and decision of said board, and of the papers and evidence upon which said decision was founded, and upon additional evidence filed in this court, and it appearing to the court that said transcript and the notice of appeal have been duly filed according to law, and counsel for the respective parties having been heard, it is ordered, adjudged, and decreed, that the decision of said board of commissioners be, and the same hereby is, in all things reversed.

And it is further adjudged and decreed that the claim of the appellant to the lands herein claimed, called Valle de San José, and situate in the county of San Diego, is good and valid, and the same are hereby confirmed to him, to the extent of four (4) square leagues, and no more, within the boundaries called for in the grant, and re-
123 presented in the map in the espediente filed in the case to which the grant refers, reference for explanation of said map being had to the parol evidence filed in this court.

Provided that should the quantity of land within said boundaries be less than four (4) square leagues, then confirmation is hereby made of such less quantity.

ISAAC S. K. OGIER,
U. S. Dis't Judge.

Filed Feb'y 23d, 1857.

C. SIMS, *Cl'k.*

Appeal.

124 United States district court, south'n dist. of Cal'a.

SILVESTRE DE LA PORTILLA *vs.* THE UNITED STATES } December term, A. D. 1856.—Feb'y 24th, A. D. 1857.—No. 144.

On motion of P. Ord, U. S. dist. att'y, it is ordered that an appeal be allowed the United States herein.

New appeal.

United States district court, south'n dist. Cal'a.—December term, A. D. 1861.

SILVESTRE DE LA PORTILLA, app'lee, *vs.* THE UNITED STATES, appl't. } December 9th, A. D. 1861.—No. 144, D. C.—No. 469, L. C.—Valle de San José.

And now comes J. R. Gitchell, esq., appointed at the request of the court to act in behalf of the U. S., (there being no U. S. dist. att'y present,) and moves the court that a new appeal be allowed the U. S. in this case to the Supreme Court of the U. S. from the order and decree of this court heretofore rendered herein.

Which motion being heard by the court and understood is granted.

125 United States district court for the southern district of California.

CLERK'S OFFICE, MONTEREY.

I, John O. Wheeler, clerk of the United States district court for the southern district of California, do hereby certify the foregoing one hundred and twenty-five pages, numbered from 1 to 124, both inclusive, to contain a full, true, and correct transcript of the record of the pro-

ceedings and of the decision of the said court of the documentary evidence, and of the testimony of the witnesses upon which the same is founded, on file in my office in case No. 144 on the docket of said court, wherein Silvestre de la Portilla is the claimant against the United States for the place known by the name of "San José del Valle."

In testimony whereof, I hereunto set my hand and affix the seal of said court at the city of Monterey this the 30th day of March, A. D. 1862.

[SEAL.]

JOHN O. WHEELER,
Clerk.

Filed Sept. 20th, 1862.